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**ANNUAL
REPORT
TO THE
ILLINOIS
GENERAL
ASSEMBLY**

**JOINT
COMMITTEE
ON
ADMINISTRATIVE
RULES**



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(217) 785-2254

LETTER OF TRANSMITTAL

HONORABLE MEMBERS OF THE
82nd GENERAL ASSEMBLY

Ladies and Gentlemen:

I hereby submit the 1981 Annual Report of the Joint Committee on Administrative Rules for your consideration pursuant to Section 7.10 of the Illinois Administrative Procedure Act (Ill. Rev. Stat., ch. 127, par. 1007.10). As required, this report contains the "findings, conclusions and recommendations, including suggested legislation" developed by the Committee as a result of its activities during 1981.

As one the original members and the third chairman of the Joint Committee, I am proud of the detailed, in-depth, bipartisan reviews of agency rules and regulations for which the Committee has become recognized during the past few years. I hope to add to that reputation during my tenure as chairman.

Too often legislative decisions are made on the basis of inadequate, or even inaccurate, information. Legislative oversight decisions have been particularly afflicted by poor information. In contrast the Joint Committee has become a source of reliable, up-to-date information about agency rules and policies for all of us in the General Assembly.

The detailed statements of objection to specific agency rules and the suggested legislation presented in this report indicate both the depth and the breadth of the Joint Committee's reviews of agency rules. Each newly proposed rule and each existing rule, which is scheduled for review in our five-year review program or is the subject of a complaint, is examined on the

basis of specific criteria. Is it authorized by statute? Is it accurately and adequately implementing the intent of the authorizing act? Is it consistent with other laws? Will it unreasonably impact the public?

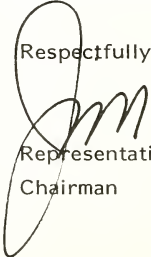
Our program to review all state agency rules subject-by-subject over five years is progressing well. The results of our review of labor and consumer protection rules, which focused on the complex rules of the Department of Labor governing unemployment insurance, are presented in this report. Our reviews of rules regulating public health and agricultural business and state travel are nearing almost completion as well. This program has provided a valuable opportunity to oversee how agencies are implementing major segments of the law enacted by the General Assembly.

During 1981, the Joint Committee also exercised its recently granted power to delay the filing of specific proposed rules. Although controversial and difficult, the temporary prohibition of the adoption of the Illinois Health Finance Authority's rules allowed time for extensive discussion and produced a better set of regulations. Continued judicious use of this power by the Committee should will preserve its effectiveness.

Overseeing the activities and policies of state agencies is a task that each of us as legislators should take seriously. As you know, many of the complaints and questions we receive from constituents involve agency-made rules, rather than the laws we enact. The Joint Committee is one mechanism we can and should utilize to address these concerns.

Finally, let me thank each of you for your suggestions and input during the past year. Your continued involvement in the activities of the Joint Committee is essential as we represent you in this vital oversight function.

Respectfully,



Representative Jim Reilly
Chairman

1981 ANNUAL REPORT
TABLE OF CONTENTS

	Page
List of Tables	4
Table of Recommended Bills	5
SUMMARY	
Activities	6
Recommendations	7
SECTION ONE: COMMITTEE ACTIVITIES	
Introduction	8
Procedural Legislation	19
Review of Proposed Rulemaking	28
Review of Emergency and Peremptory Rulemaking	36
Five-Year Review Program	38
Complaint Review Program	44
Public Act Review	47
Business Regulation Study	60
Court Decisions and Attorney General Opinions	62
SECTION TWO: STATISTICAL SUMMARY	
Discussion	70
Tables	72
SECTION THREE: SPECIFIC OBJECTIONS AND RECOMMENDATIONS ISSUED	
Statements of Objection	84
Statements of Recommendation	129
SECTION FOUR: RECOMMENDED LEGISLATION	
Summary of Bills	163
Recommended Bills (Bills One--Bill Four)	173
Suggested Bills (Bill Five--Bill Eight)	196
APPENDIXES	
Appendix A: Illinois Administrative Procedure Act	217
Appendix B: Operational Rules of the Joint Committee	240
Appendix C: Court Decisions and Attorney General Opinion	286

LIST OF TABLES

	Page
Table One: Functional Organization Chart	15
Table Two: Personnel Organization Chart	16
Table Three: Public Acts Amending the Illinois Administrative Procedure Act	26-27
Table Four: Status of Current Five-Year Review Categories	44
Table Five: Number of 1981 Public Acts Which Could Require Rulemaking by Agency	49-50
Table Six: Specific Public Acts, Agency and Response	51-59
Table Seven: Comparison of General Rulemakings by Agency for 1978 through 1981	72-75
Table Eight: Comparison of Emergency and Peremptory Rulemaking by Agency for 1980 and 1981	76-77
Table Nine: Rulemakings by Agency for 1981	78-80
Table Ten: Statements of Objection Issued during 1981 by Agency	81
Table Eleven: Nature of Responses to Objections by Agency	82
Table Twelve: Comparison of Agency Responses to Objections (1978 to 1981)	83

TABLE OF RECOMMENDED AND SUGGESTED BILLS

<u>Bill Number</u>	<u>Objection or Discussion</u>	<u>Background And Summary</u>	<u>Text</u>
	<u>Pages</u>	<u>Pages</u>	<u>Pages</u>
<u>Recommended Bills</u>			
ONE	23-24	164-165	173-179
TWO	40-41	165-166	180-183
THREE		166-167	184-190
FOUR		167-168	191-195
<u>Suggested Bills</u>			
FIVE	87-88	168-169	196-198
SIX	88	169-170	199-200
SEVEN	41-42	170-171	201-206
EIGHT	100-101	171-172	207-216

Activities

The Joint Committee on Administrative Rules serves the Illinois General Assembly by providing continuing oversight of state agency rules and regulations. This specialized oversight function is designed to maintain the legislature's authority over policy-making and to facilitate coordination between the legislative and executive branches of government.

During 1981, the Joint Committee reviewed over seven hundred new proposed, emergency and peremptory rulemakings of state agencies. In addition, the Committee reviewed nine sets of existing regulations on labor laws and consumer protection as part of its five-year review program including rules governing unemployment insurance. The five-year reviews of an additional forty sets of existing regulations on business regulation and several other subjects were nearing completion and the review of over one hundred more sets of regulations in several other subject areas was initiated.

As a result of its reviews of new and old rules, the Joint Committee issued over sixty formal statements of objection and an additional sixty statements of recommendation. These detailed statements were presented to agencies for their formal response. In many cases the objectionable rules were modified, amended, withdrawn or repealed by the agencies.

One major set of rules proposed by the Illinois Health Finance Authority to control hospital costs was blocked by the Joint Committee under a 1980 Act authorizing such action on seriously objectionable rules. After extensive discussions, the authority adopted an acceptable set of rules.

The Committee also initiated a study to identify and catalog regulations affecting business, investigated complaints received from the public about specific agency rules, encouraged passage of several bills to improve rulemaking procedures, informed agencies of new public acts which could require rulemaking, and monitored court decisions and opinions issued by the Attorney General which affect administrative procedures.

Recommendations

The Joint Committee is recommending or suggesting eight specific bills for consideration by the General Assembly. Most of these bills addresses specific statutory issues uncovered by the Committee in its review of specific rules and regulations. These recommendations include provisions to require agencies to develop needed rules which agencies had refused to develop and provisions to authorize rules which agencies had proposed without statutory authority. Other recommendations are intended to clarify statutory provisions which agencies had difficulty interpreting and implementing in the rulemaking process.

SECTION ONE

COMMITTEE ACTIVITIES

INTRODUCTION

This fourth annual report of the Joint Committee on Administrative Rules details the activities and recommendations of the Committee during 1981. The extensive work of the Committee during the year is indicated well by the breadth and depth of the detailed statements of objection and recommended legislation included in this report, these two specific results of the committee's activities are presented in section three and section four of this report.

A comprehensive evaluation of the effectiveness of the Joint Committee has not yet been conducted, but it is clear that the Committee has been making progress toward a number of its goals. Agency-made rules and regulations are now more easily accessible to the public. More attention is being directed toward insuring that agencies do not exceed their statutory authority in their rulemaking. Legislators are more aware of the need to write legislation with clear and specific delegations of rulemaking authority. The rulemaking process is more open to public input and agencies are more aware of their responsibility to respond to public comments on rules. While many of these results are difficult to measure, the Joint Committee has had a significant impact on agency rulemaking and regulatory actions.

Each of the Committee's activities during 1981 will be discussed in this narrative section of this report. The approach and results of each of the programs and projects of the Committee will be discussed. This introduction outlines the basic functions of the Committee explains the Committee's organization, highlights the Committee's major accomplishments in 1981 and presents an overview of this report. Those individuals who are unfamiliar with the functions and operation of the Joint Committee should find this introduction particularly useful.

Other individuals who are acquainted with the Joint Committee's basic responsibilities and approach may want to go directly to the discussion of particular programs and activities.

Basic Functions

The most basic statement of the function of the Joint Committee is presented in Section 7.04(1) of the Administrative Procedure Act: "The function of the Joint Committee shall be the promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules." This statement indicates the two basic directions of the Joint Committee's activities: (1) working with state agencies to improve rulemaking and rules and (2) promoting public understanding of the rulemaking process and of the rules themselves.

The Joint Committee was created in 1977 in a comprehensive amendment to the Administrative Procedure Act (Public Act 80-1035; House Bill 14). The Administrative Procedure Act had been passed in 1975, but the General Assembly recognized the Act's weaknesses without the existence of a mechanism for systematic oversight of the rulemaking process and direct legislative involvement. The creation of the Joint Committee was an attempt to fill that need for systematic oversight.

The legislature's desire for systematic oversight of state agencies' rulemaking and rules is met by the several interrelated review programs conducted by the Joint Committee. These programs can only be briefly summarized here, but additional details on each of these programs are presented in the various sections of the rest of this report.

1. **Review of Proposed Rulemaking.** Each new rule, amendment to an existing rule and repeal of an existing rule proposed by a state agency is reviewed by the Joint Committee. This review, which must be accomplished within a strict 45-day time period, is primarily intended to insure that new rules are within the agency's statutory authority and are legally proper.

2. **Five-Year Review of all Existing Rules.** The Administrative Procedure Act requires the Joint Committee to conduct a systematic review of

all the currently effective rules of all state agencies, regardless of when the rules were adopted. This program complements the review of newly proposed rules by providing for an examination of rules which may have been in effect for a long time and may no longer be serving the purpose for which they were intended. The primary purpose of this type of review is to clean up the existing rules and reduce or eliminate areas of conflict or overlap between rules.

3. Review of Emergency and Peremptory Rulemaking. To better monitor the rulemaking process, the Joint Committee also reviews emergency and peremptory rules which agencies have adopted in addition to regularly proposed rules. Since emergency and peremptory rules are not required to be published for public comment, the Joint Committee carefully reviews these rules to insure that they comply with the limited conditions specified in the Administrative Procedure Act under which such rules may be adopted. This review has resulted in more limited use of the emergency rulemaking process by state agencies (see Table Eight, page).

4. Complaint Reviews. The Joint Committee frequently receives complaints from the public about specific rules of state agencies. These complaints typically argue that the rule is unauthorized or unreasonable, or has a serious impact on the affected public. Although formal objections based on these complaints are not usually required, the Joint Committee attempts to answer the questions which have been raised about the Committee to focus attention on issues which are of particular concern to the public.

5. Public Act Review. To supplement these programs to review agency rules, the Joint Committee also reviews each new public act for its possible effect on rulemaking. The Committee informs agencies when it finds that a new public act may require rulemaking. Then, it monitors the agency's response and actions to adopt the necessary rules. This review is intended to help insure that acts passed by the legislature are implemented properly and translated into rules whenever necessary.

In a broad sense, each of the Joint Committee's programs is intended to

facilitate coordination between the legislative and administrative processes in state government. They reflect a growing concern by the legislature that programs and policies be implemented as the legislature intended in the authorizing legislation.

Accomplishments During 1981

The Joint Committee has continued to develop as a strong and effective mechanism for legislative oversight of agency policy-making during 1981. Each of the Committee's basic functions have been performed with the objectives of the Administrative Procedure Act in mind and with a sensitivity to the capabilities of the agencies and to the needs of the public.

The most significant accomplishments of the Joint Committee during the 1981 included five specific achievements.

1. Effective implementation of the Committee's power to prohibit the adoption of seriously defective proposed rules. The amendment to the Administrative Procedure Act which empowered the Joint Committee to block seriously defective proposed rules became effective on January 1, 1981 (see Section 7.06a of the Act in Appendix A). The Committee adopted specific standards in its operational rules to clearly delineate the situations in which this new power would be utilized (see Section 220.950 of the Operational Rules in Appendix B). This authority was utilized only once during 1981, when the Illinois Health Finance Authority proposed a set of rules to regulate the financial management of hospitals. An extended discussion of this specific action is presented on pages 30-32. While this instance may not be typical, it does illustrate that the Joint Committee has laid a solid foundation to implement this power. This power will continue to be utilized only infrequently as a last resort when less severe action has failed.

2. Initiation of a major study to identify and catalog all rules and regulations affecting businesses in the state. This study has been initiated in cooperation with the Illinois Commission on Intergovernmental Cooperation and the Department of Commerce and Community Affairs. A steering committee has been formed and research has begun on the process of locating

and collecting information about business-related regulations. A survey of state agencies and input from the business community will be utilized to develop a Catalog of Business Regulations, which will be the primary product of this study. Additional discussion of this project is located on pages 60-61.

3. Completion of the review of rules in several major subject areas under the five-year review program. The unemployment insurance rules of the Department of Labor were the primary focus of the labor laws and consumer protection rules. The review of state travel regulations and a major portion of the business regulation rules review were completed as well. Numerous statements of objection and several recommended bills resulted from these reviews, which are discussed in more detail on pages 41-43. These results confirm the usefulness of this systematic subject-by-subject review process.

4. Completion of the codification of about one-fourth of all of the rules and regulations. The Joint Committee advised, encouraged, and supported the efforts of the Illinois State Library, the office of the Secretary of State and the Legislative Information System to accomplish the codification of these rules. The codification was completed prior to the October 1, 1981, deadline and work has begun on the codification of rules scheduled for the second year of this effort. The Joint Committee is continuing to monitor and support this effort, looking forward to the publication of a complete Illinois Administrative Code in 1984 or 1985. This effort has the potential for greatly improving the availability of, and public access to, agency rules.

5. Passage of several significant amendments to the Administrative Procedure Act. These amendments clarified the Act's provisions on incorporation by reference, and added new requirements for public hearings on proposed rules, for consideration of the impact of rules on small businesses, and for maintaining declaratory rulings. These amendments, most of which were recommended by the Committee in its 1980 Annual Report, are discussed on pages 19-23. They represent significant fine-tuning of the rulemaking process to insure public input and reasonable decision-making.

Other, less important, accomplishments of the Joint Committee during 1981 are discussed throughout this report.

Committee Members

The active involvement of the members of the Joint Committee in the on-going functions of the office has proven to be essential in making the office as effective as possible. Many of the Committee members have dedicated many hours to pouring over proposed agency rules, staff reports, agency responses to detailed questions and staff recommendations, as well as participating in formal Committee hearings to question agency representatives or to gather public input on rules and regulatory policies. While participation in these types of legislative oversight activities may not be the most visible, or the most personally rewarding, of the tasks required of legislators, it is an effective method of representing constituents and impacting government operations at a level where government programs actually affect the people of the state.

Members of the Joint Committee are appointed by the legislative leaders for two-year terms. Appointments are made during the summer and officers are elected by the Committee from its members in the fall of each odd-numbered year. Section 7.02 of the Administrative Procedure Act (see page 229) specifies these procedures. It also provides that vacancies are filled by the official who appointed the individual whose position is vacant.

Legislators who were appointed or reappointed to the Committees during 1981 are:

Appointed by the President of the Senate:

Senator Arthur L. Berman (Democrat, 28th District, Chicago)

Senator Vince Demuzio (Democrat, 49th District, Carlinville)

Senator James Gitz (Democrat, 35th District, Freeport)

Senator Jeremiah E. Joyce (Democrat, 28th District, Chicago)

Appointed by the Senate Minority Leader:

Senator Prescott E. Bloom (Republican, 46th District, Peoria)
Senator Jack E. Bowers (Republican, 41st District, Downers Grove)
Senator John Maitland, Jr. (Republican, 44th District, Bloomington)
Senator Richard A. Walsh (Republican, 5th District, Chicago)

Appointed by the Speaker of the House:

Representative Glen L. Bower (Republican, 54th District, Effingham)
Representative Bob Kustra (Republican, 4th District, Des Plaines)
Representative A. T. "Tom" McMaster (Republican, 47th District, Galesburg)
Representative Jim Reilly (Republican, 49th District, Jacksonville)

Appointed by the House Minority Leader:

Representative John J. Cullerton (Democrat, 12th District, Chicago)
Representative Monroe L. Flinn (Democrat, 57th District, Granite City)
Representative Richard Kelly, Jr. (Democrat, 9th District, Hazel Crest)
Representative Harry "Bus" Yourell (Democrat, 8th District, Oak Lawn)

Other legislators who served on the Joint Committee during all, or part of, 1981, but were not reappointed to the Committee, include:

Senator George E. Sangmeister (Democrat, 42nd District, Joliet)
Senator Frank D. Savickas (Democrat, 27th District, Chicago)
Representative Alan J. Greiman (Democrat, 15th District, Skokie)
Representative Douglas N. Kane (Democrat, 50th District, Springfield)
Representative Robert C. Winchester (Republican, 59th District, Rosiclare)

New officers were elected by the Committee members in the fall of 1981 as provided in the Administrative Procedure Act. These officers oversee the Committee's business and operations and serve as the Personnel Committee for evaluating employee performance. The officers elected in 1981, who will serve until the fall of 1983, are:

TABLE ONE: FUNCTIONAL ORGANIZATION CHART

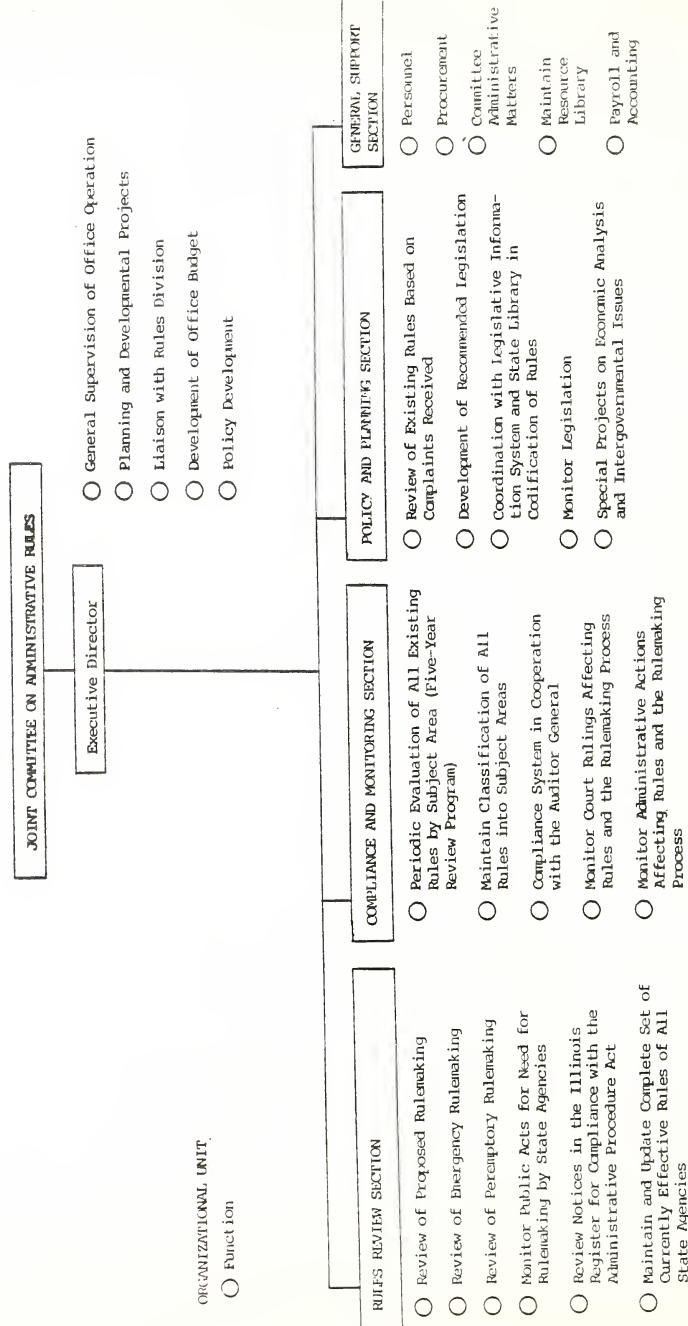
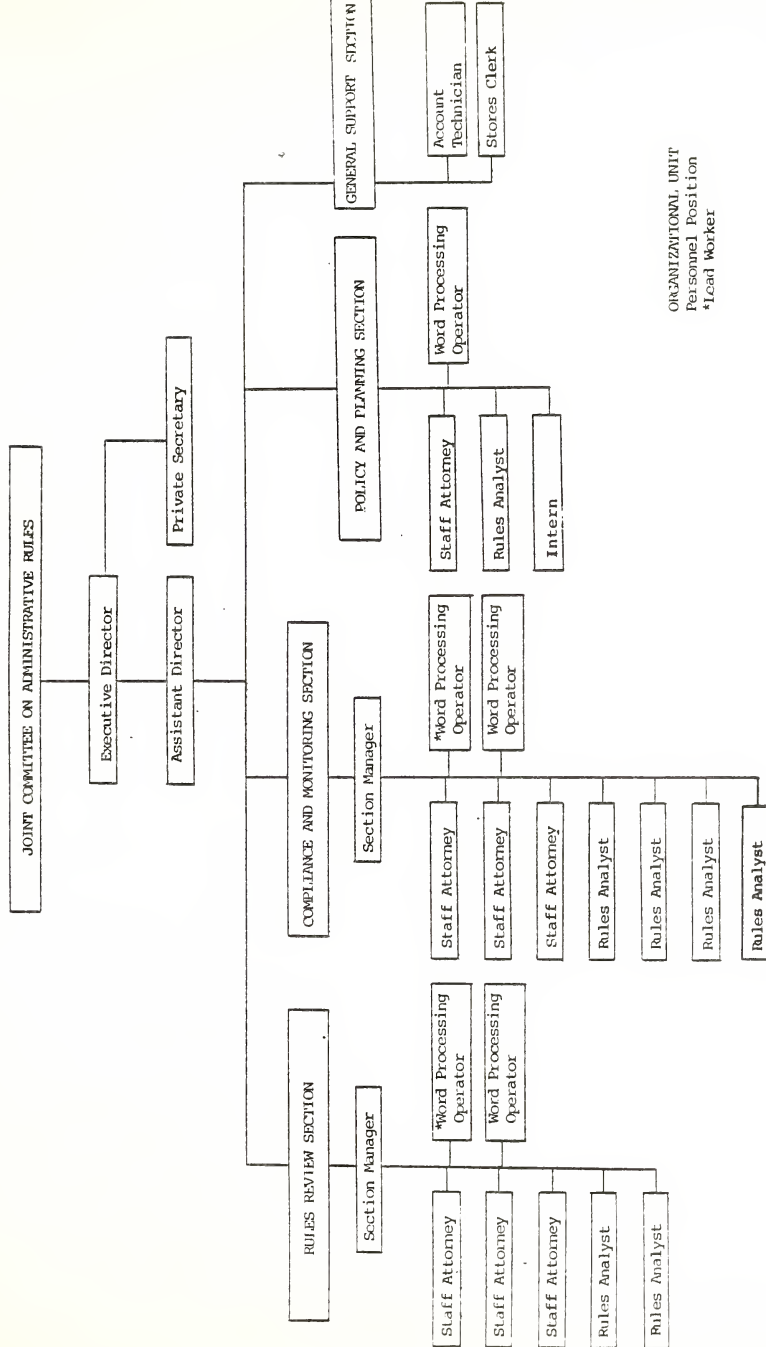


TABLE TWO: PERSONNEL ORGANIZATION CHART



ORGANIZATIONAL UNIT
Personnel Position
*Lead Worker

Chairman: Representative Jim Reilly

First Vice-Chairman: Senator Arthur L. Berman

Second Vice-Chairman: Senator Prescott E. Bloom

Secretary: Representative Harry "Bus" Yourell

Staffing and Organization

The staff of the Joint Committee is headed by an Executive Director selected by the members of the Joint Committee. He is responsible for the overall development, management, and operation of the staff of the Joint Committee. He is assisted in the management of the office by the Assistant Director, Rules Review Manager, and Compliance and Monitoring Manager. The Individuals filling these key positions during 1981 were:

Executive Director: Bruce A. Johnson

Assistant Director: Kenneth E. Mitchell

Rules Review Manager: Michael L. Wallace

Compliance and Monitoring Manager: Thomas R. Wetzler

About half of the professional staff of the Joint Committee are attorneys. The other half are subject area specialists with training in disciplines such as economics, social services administration, policy analysis, political science, and public administration. The multi-disciplinary background of the staff provides a balanced and thorough review of proposed and existing rules.

The staff and functional organization of the office of the Joint Committee is presented in Tables One and Two on the next two pages. The creation of the Policy and Planning Section and the addition of one professional position to assist in the business regulation catalog project were the major changes in the staff organization during 1981. The operation of the Policy and Planning Section will enable the Committee to focus greater attention on complaint reviews and on the development of recommended legislation.

Report Overview

This report is divided into four basic sections. This first section (pages 8-69) is a narrative discussion of the Committee's activities during

1981. Each of the Committee's major functions and programs as well as various special projects the Committee has undertaken are outlined in this section. Also included in this narrative section of the report is an analysis of a number of court cases and Attorney General's opinions which interpret the Administrative Procedure Act or affect the rulemaking process (see pages 62-69).

The second section of the report (pages 70-83) summarizes the Committee's activities and state agencies' rulemaking actions during 1981 statistically. A number of tables are included in this section presenting breakdowns by agency and types of rulemaking actions. This section should indicate not only the workload and general activities of the Committee, but also the general pattern of rulemaking by state agencies.

Each of the specific formal statements of objection issued by the Joint Committee during 1981 are collected in the third section of this report (pages 84-162) these statements, which were published in the Illinois Register when they were issued, are advisory in nature, but often result in significant changes in the rules. The statements are organized by agency along with information concerning the history and outcome of the rulemaking and the objection.

Section four of the report (pages 163-216) contains the legislation recommended or suggested by the Joint Committee for consideration by the General Assembly during the 1982 legislative session. Most of these bills are the result of specific reviews of agency rules which uncovered statutory difficulties. A discussion and summary of each of these bills is presented at the beginning of the section.

Supplementary materials which may be of interest to individuals concerned about the rulemaking process in Illinois, are presented in the appendices to this report (pages 217-300). These materials include the current versions of the Administrative Procedure Act and the Joint Committee's Operational Rules. Copies of several court cases and an attorney general's opinion, which may not be easily obtainable, are also included.

PROCEDURAL LEGISLATION

As part of a continuing effort to improve the rulemaking process, the Joint Committee annually makes recommendations to the General Assembly for changes in the Administrative Procedure Act. Most of these recommendations represent effort to fine-tune the provisions of the Act, to streamline the Act's procedures, or to reduce problems agencies encounter in attempting to comply with the Act. These recommendations may be based on any one of a variety of sources, including revisions to the Model State Administrative Procedure Act, problems encountered during the course of a review, or a complaint from an agency or individual.

In the 1980 Annual Report, the Joint Committee outlined a number of specific recommendations for procedural changes in the Administrative Procedure Act, many of which were enacted into law during 1981. In addition to the Joint Committee's recommendations, several other amendments to the Act were proposed by other legislators and were enacted during the legislative session, including one bill which was enacted over the Governor's veto. These procedural changes, including the changes recommended by sources other than the Joint Committee, are discussed in this section.

Besides discussing the legislation enacted in 1981, this section also discusses several minor changes in the Act which the Joint Committee is recommending for legislative consideration during 1982. One bill recommended and introduced last year by the Joint Committee is still pending in the legislative process and is also likely to be considered during the 1982 legislative session.

Procedural Changes Enacted in 1981

One of the technical problems the Joint Committee has most frequently encountered is when and how agencies can properly adopt material "by reference." Adoption by reference refers to the practice of satisfying the requirement that the full text of federal rules or professional or business standards be published by simply providing a citation to the Federal Register

or Code of Federal Regulations where the text of the rules is located, or a copy of the standards. An initial attempt to address this issue in 1979 (House Bill 2226; Public Act 81-1044) proved to be inadequate.

Senate Bill 508 (PA 82-689), sponsored by Senator Prescott E. Bloom (R.-Peoria), clarifies the issue of agencies adopting material by reference (see Recommended Bill One, 1980 Annual Report). The new language allows agencies to adopt by reference regulations and trade or business association standards and specifies the procedures for adoption. In addition, the new legislation will insure that regulations adopted by reference are reasonably available to the public, and will ease some of the publication requirements that the agencies have found burdensome. The State Library will play an important role in the process of insuring that these materials are publically available under the provisions of this Act.

The bill was amendatorily vetoed by the Governor to delete a provision allowing consideration only of federal rules duly adopted under the Federal Administrative Procedure Act. Instead, the Act allows any federal rules which are published in the Federal Register or Code of Federal Regulations to be adopted by reference.

Another Joint Committee recommended bill, Senate Bill 514 (PA 82-242) sponsored by Senator Arthur L. Berman (D.-Chicago), help resolve two additional problems in the implementation of the Administrative Procedure Act. The bill was originally proposed as two separate pieces of legislation (see Recommended Bills Three and Four, 1980 Annual Report).

First, the bill requires a public hearing on proposed rules if a hearing is requested by a significant number of interested persons or government officials. This provision should eliminate the practice of agencies refusing or neglecting to hold hearings on significant proposed rules, and will allow more public input into the rulemaking process.

Second, the bill includes a one-year deadline for final adoption of proposed rules. In the past, agencies have failed to adopt, or to withdraw, several significant proposed rules, leaving the status of the rules uncertain and resulting in needless confusion. The one-year deadline will reduce this uncertainty about the status of proposed rules. Since agencies are not prohibited from re-proposing the rule after the deadline, it should not create an undue burden on agencies.

Two minor problems in adequately informing the public concerning the rulemaking process are addressed in House Bill 821 (PA 82-372) (see Recommended Bill Five, 1980 Annual Report). The bill was sponsored in the House by Representative Jim Reilly (R.-Jacksonville). First, members of the public are often unaware that an agency has sent a second notice to the Joint Committee on a specific proposed rulemaking. The new legislation provides that the Joint Committee may submit for publication in the Illinois Register lists of dates rulemaking notices were received and will be considered.

Second, due to fiscal and time constraints, it is impossible to provide copies of all the reports and documents prepared for the Joint Committee to all the members of the public who may have an interest in them. The new Act allows the Joint Committee to charge reasonable fees for copies of documents or publications. In response to several state agencies which expressed concern with the bill's language, an amendment was added which provides that copies of documents will be provided without cost to agencies directly affected by the recommendations included in the documents.

House Bill 1049 (PA 82-127), sponsored by Representative Thomas W. Ewing (R.-Pontiac), creates the Illinois Department of Revenue Sunshine Act and will help control the use of letter rulings by state agencies. The bill combined two recommendations of the Joint Committee with other legislative concerns (see Recommended Bills Six and Eight, 1980 Annual Report).

The bill requires the Department of Revenue to make its rulings available to the public and publish a quarterly index with a synopsis of each of its letter rulings in the Illinois Register. In addition, the bill contains provisions which will insure that all state agencies are properly using and maintaining declaratory rulings. Public awareness of these materials and the

opportunity for meaningful participation in the rulemaking process should be enhanced by these provisions.

The Governor amendatorily vetoed the bill, stating that portions of the bill were a reiteration of the basic purpose of the Act and therefore unnecessary. The language in question dealt with the definition of a rule and agency requirements for declaratory rulings that "contain any policy of general applicability." The changes were accepted by the legislature as clarifying the intent of the bill.

One of the most important bills passed affecting the rulemaking process is Senate Bill 546 (PA 82-492), the Regulatory Flexibility Act. The Illinois State Chamber of Commerce and a number of small business groups were instrumental in developing and supporting this legislation, which was sponsored by Senator Bloom. The bill is patterned after the Federal Regulatory Flexibility Act and is based on the belief that small businesses are often unduly burdened by the rules and regulations promulgated by various state agencies, and that agencies should allow some flexibility in the compliance and reporting requirements contained in their rules.

The bill contains a number of specific provisions which allow state agencies to adapt their rules and regulations to the needs and constraints of small business. Agencies are required to consider several different methods for reducing the impact of a rulemaking on small businesses. In addition, the bill contains provisions requiring agencies to solicit and consider the input of small businesses on proposed rules which may affect them, and several such techniques are listed.

The other major provisions in the bill require agencies to provide specific information on how their rules will affect small businesses. The information will be included in two regulatory flexibility analyses--an initial analysis in the notice of proposed rulemaking published in the Illinois Register, and a final analysis in the notice sent to the Joint Committee after the public notice period.

House Bill 1209 (PA 82-298) also amends the Administrative Procedure Act. This bill, introduced by Representative Ellis Levin (D.-Chicago), provides for an agency "contact person" for each rule adopted and filed with the Secretary of State. The bill requires that the notice in the Illinois Register include the name, address and telephone number of an individual who will be available to answer questions and provide information to the public concerning the rule.

Another bill amending the Administrative Procedure Act, which was not recommended by the Joint Committee, could have a significant impact on the rulemaking process. Senate Bill 355 (PA 82-670), sponsored by Senator Leroy W. Lemke (D.-Chicago) and entitled the Equal Access to Justice Act, allows attorney fees and legal costs to be recovered by businesses in certain cases involving administrative rules. The bill, which was enacted over the Governor's veto, allows a company found by an administrative hearing examiner to be innocent of a charge brought by a state agency to recover legal costs from that agency, if the charge is found to be untrue and without reasonable cause.

The Governor in his veto message said the prospect of paying the entire cost of litigation "could encourage agencies to abdicate their responsibilities and leave as unenforced any law that appears to fall into a grey area of interpretation." He also stated that "the number of frivolous complaints against state agencies, and the amount of unnecessary and expensive litigation would skyrocket."

The actual experience under this Act will need to be monitored and evaluated during the next several years to determine its effects. The actual results are likely to fall somewhere in between the disaster predicted by the veto message and the boon to the state's business climate anticipated by the bill's proponents.

Changes Recommended for Consideration During 1982

One of the Joint Committee's recommended procedural bills, House Bill 834, reached passage stage in the House, but was placed on the spring calendar for consideration during 1982 (see Recommended Bill Two, 1980

Annual Report). The bill amends the Administrative Procedure Act to require state agencies to formulate their rules in plain and clear English. The issue of plain and clear English in rules and regulations as well as in consumer contracts, insurance policies and other public-oriented documents has become increasingly visible, and the legislation is certain to receive serious consideration in the 1982 legislative session.

This report presents one additional procedural bill which the Joint Committee is recommending for consideration during the 1982 session (see Recommended Bill One, pages 173-179). This bill addresses several specific problems the Joint Committee has encountered with the "second notice period." It will provide some needed flexibility for agencies and codify some of the informal practices which have become fairly routine in the interaction between agencies and the Joint Committee. The most significant changes the bill would implement include:

1. Allows agencies to formally withdraw a second notice submitted to the Joint Committee. Such action has not been allowed informally in the past, but specific statutory authorization would provide a firm footing for this practice.
2. Allows agencies to formally extend a second notice period for an additional forty-five days. Agencies have, in a number of instances, agreed informally to delay the adoption and filing of proposed rules to allow additional time for consideration by the Joint Committee. In effect, this practice extends the second notice period, although it may technically limit the effect of objections issued by the Joint Committee after the actual end of the formal 45-day period. The recommended amendments will reduce these problems, by providing a formal mechanism for extension of the Committee's review period.

Several related technical amendments to the Act are also included in this recommended bill.

Continued attention by the Joint Committee to needed changes in the Administrative Procedure Act will insure that the Act does not impose

unreasonable burdens on agencies and that public and legislative input into rulemaking is encouraged. These recommended changes help fulfill an important part of the Joint Committee's function of promoting proper and efficient rulemaking.

TABLE THREE

PUBLIC ACTS AMENDING THE
ILLINOIS ADMINISTRATIVE PROCEDURE ACT

	<u>Public Act Number</u>	<u>Effective Date</u>	<u>Bill Number</u>	<u>Main Provisions</u>
79th General Assembly (1975-1976)	79-1083	September 22, 1975	HB981	initial enactment
80th General Assembly (1977-1978)	80-1035	September 27, 1977	HB14	Illinois Register; creation of Joint Committee; major revision
	80-1457	January 1, 1979	HB15	minor changes in agency definition; codification system; Joint Committee quorum
81st General Assembly (1979-1980)	81-1044	October 1, 1979	HB2226	second notice period peremptory rulemaking; incorporation by reference
	81-1035	January 1, 1980	HB1196	economic effects of rulemaking
	81-1129	January 1, 1980	SB419	standards for exercising discretion
	81-1348	October 1, 1980	SB1822	codification; editorial; publication of administrative code
	81-1514	January 1, 1981	HB2351	legislative delay and suspension powers; exemption for Department of Personnel
82nd General Assembly (1981)	82-372	September 2, 1981	HB821	notice dates and copying charges; internal changes in Joint Committee

<u>Public Act Number</u>	<u>Effective Date</u>	<u>Bill Number</u>	<u>Main Provisions</u>
82-727	November 12, 1981	HB1049	declaratory rulings
82-670	January 1, 1982	SB355	expenses of contesting agency action
82-242	January 1, 1982	SB514	public hearings; deadline for adoption
82-492	January 1, 1982	SB546	regulatory flexibility; impact on small business
82-298	January 1, 1982	HB1209	agency contact person
82-689	July 1, 1982	SB508	incorporation by reference

See pages 217-218 for notes on the specific sections of the Illinois Administrative Procedure Act amended or added by each of the public acts enacted in 1981.

REVIEW OF PROPOSED RULEMAKING

The Joint Committee continued its vigorous review of all new rules proposed by state agencies during 1981. The impact of this review process was significantly strengthened by the Committee's new authority to delay the adoption of seriously defective proposed rules. This new authority was enacted during the fall 1980 legislation session over a gubernatorial veto and became effective on January 1, 1981. It was implemented with rulemaking by the Committee during the first several months of the year. The Joint Committee's care in implementing this new authority should enhance its effectiveness as an oversight tool.

A major test of the Joint Committee's implementation of the authority to block seriously defective rules occurred during the summer of 1981. The Committee prohibited the adoption of a set of rules proposed by the Illinois Health Finance Authority and referred the issue to the full General Assembly by introducing a joint resolution to continue the prohibition. After extensive discussions with most of the major interests involved in the rules, the Joint Committee was able to allow the Authority to adopt a substantially revised set of rules. The details involved in this incident will be discussed later in this section, but it is clear that the Committee's authority to block proposed rules was used effectively in this first instance to forge a better set of regulations.

The number of rulemakings proposed by state agencies during 1981 continued to increase over previous years. A total of 640 separate rulemaking actions were proposed by agencies and reviewed by the Joint Committee during the year. These rulemakings ranged from simple one-sentence amendments to existing rules to the proposed adoption of hundreds of pages of complex regulations. The statistical summary section of this report (pages 70-83) presents additional detail on the volume of rulemaking during the year, but the large workload of the Joint Committee is indicated by these figures. Since the Committee meets monthly to consider new rulemakings, the 640 total can be translated into an average of over 50 separate proposed rulemaking actions considered at each hearing. About 30 of these rulemakings were formally objected to by the Joint Committee during the year, although virtually all of the rules were changed in some way by the Committee's review. Often these changes were simple typographical or technical

corrections suggested by the Joint Committee staff. In other cases extensive revisions and refinements resulted from the Committee's input.

Several of the most important developments in the Joint Committee's review of proposed rulemaking will be discussed in some detail in this section. The implementation of the new power over seriously defective proposed rules and the first use of this power in blocking rules proposed by the Illinois Health Finance Authority will be discussed first. Then the basic criteria for reviewing proposed rules and several of the most significant objections issued by the Committee during the year will be discussed. The full text of each of the objections issued during 1981 are included in Section Three of this report (pages 84-129).

Implementation of Public Act 81-1514

Attempts to strengthen the authority of the Joint Committee over improper proposed rules were initiated in 1979. Following extensive discussion about the need for increased responsiveness of agencies to legislative objections to proposed rules, two bills to strengthen the Joint Committee's authority were introduced by members of the Committee -- Senate Bill 307 by Senator Prescott E. Bloom (R.-Peoria) and House Bill 1503 by Representative Harry "Bus" Yourell (D.-Oak Lawn). Senate Bill 307, which increased the effect of the Committee's objections by reversing the burden of proof in any subsequent court case challenging the rule, was passed by the legislature, but vetoed by the Governor. An attempt to override the veto was unsuccessful. House Bill 1503, which took a much more direct approach to strengthening the Committee's authority, was held at the end of the 1979 legislative session at passage stage in the House.

During the 1980 session, following the defeat of Senate Bill 307, attention focused on the provisions included in House Bill 1503. These strengthening provisions were eventually incorporated into House Bill 2351 and passed by the General Assembly. In the Fall session, the bill with the provisions strengthening the Joint Committee was enacted by a wide margin over the Governor's veto. It became effective as Public Act 81-1514 on January 1, 1981.

The major provisions of Public Act 81-1514 provide authority for the Joint Committee to delay the adoption of proposed rules for 180 days. Among the specific

conditions included in the Act under which the Committee can exercise this authority are: (1) The proposed rules must be objectionable under the Committee's regular review criteria. (2) Rules could only be blocked by a vote of three-fifths of the members of the Committee. (3) The Committee must find that the rules "constitute a serious threat to the public interest, safety or welfare." The Act also requires the Committee to refer the issue to the full General Assembly by introduction of a joint resolution. Adoption of the joint resolution by both chambers of the legislature would permanently block the adoption of the rules. Similar provisions were included to allow the temporary suspension of emergency or peremptory rules. The text of these provisions is included in Appendix A (see Sections 7.06a and 7.07a of the Illinois Administrative Procedure Act on pages 232-235).

To implement this authority effectively, the Joint Committee proposed several amendments to its operational rules in January 1981. These amendments specified procedures for the Committee's action and also presented a list of criteria which the Committee would use in interpreting and applying the key statutory phrase "serious threat to the public interest, safety or welfare." Eight specific criteria were outlined in the proposed rules as the Joint Committee's interpretation of this phrase. Following consideration of a number of comments received from individuals and state agencies, the Committee adopted the amendments in May 1981. The text of the adopted list of criteria is included in Appendix B (see Section 220.950 of the Joint Committee's operational rules on pages 248-249).

While there are a wide range of legal and policy arguments about the authority of the legislature to block, or "veto," proposed rules, the Joint Committee has attempted to implement its authority under Public Act 81-1514 as carefully and effectively as possible. The adoption of specific criteria in its operational rules reduces the possibility of arbitrary or improper exercise of this authority as well as informing the agencies and the affected public of the basis on which the Committee will utilize this authority. It seems clear that the existence of this authority, even though it has only been exercised on one occasion, has enhanced the Committee's impact on proposed rules.

Illinois Health Finance Authority

One of the Joint Committee's most significant actions during 1981 was the first

exercise of its "veto" power. The action blocked rules proposed by the Illinois Health Finance Authority, an agency created by the legislature in 1979 to review the budgets of hospitals in the state and approve their rates for services. The proposed rules were the Authority's attempt to implement a hospital rate review program to control the rising costs of hospital care.

Hospital costs have increased dramatically since 1965, due in large part to the beginning of the Medicaid and Medicare programs and to some degree the accompanying expansion of private insurance programs. In fact, between 1965 and 1971, hospital expenditures grew twice as fast as expenditures for other services. Medical and Medicare programs both guaranteed the payment of the full costs of care, and thereby eroded the incentive to control those costs.

In addition, the programs led to a shift in hospital population (more elderly and poor) and an increase in the cost per patient. This increase allowed physicians and administrators to carry out new and expensive projects which were previously out of reach. According to the U.S. Bureau of Labor Statistics, the price of hospital care increased by 14.5 per cent in 1980, and medical care in general rose 10 percent. The National Health Care Finance Administration estimates that health care expenses for hospitals will rise from \$97 billion to \$335 billion in this decade.

Prior to the new proposal, the Health Finance Authority employed a system of retrospective rate-setting whereby the hospitals determined their own rates after the delivery of services and subsequent computing of costs. The new proposed rules utilized a system of prospective rate-setting under which the Authority would approve in advance a specific amount of revenue that a hospital could generate each year.

The Joint Committee found a number of serious deficiencies in the proposed rules, and several specific reasons were cited for issuing the filing prohibition, including the following:

1. The proposed rules contained an improper definition of "hospital services" which will result in discontinuation of services and thereby pose a serious threat to the welfare of Illinois citizens, particularly the aged and chronically ill.

2. The proposed rules prescribed a Uniform Hospital Report which will impose tremendous costs, estimated at \$10 million annually, or \$135 per bed per year, on the hospitals and will pose a serious threat to the interests of consumers of health care.
3. In conjunction with the promulgation of these rules, the Authority was negotiating payor differentials without due regard to demonstrated cost differences which will pose a serious threat to the interest of Illinois Citizens by raising private insurance premium rates.
4. In conjunction with the promulgation of these rules, the Authority was negotiating the granting of contingent liability to the federal government which will cause increased costs and/or decreased quality of care and poses a serious threat to Illinois Citizens.

To make the prohibition permanent, the General Assembly is required to pass a joint resolution stating that it desires to continue the prohibition of the proposed rules. A resolution was adopted in the House (HJR 42) but was held up in the Senate when the Health Finance Authority requested the opportunity to propose a new set of rules which would meet the objections of the Joint Committee. The Authority's revised rules were not objectionable to the Joint Committee and were duly adopted. These revised rules resolved many of the deficiencies noted by the Committee.

Although the rules were scheduled to go into effect during the spring of 1982, the Authority has decided to delay the effective date until the fall. This decision was based on several factors, including problems obtaining federal approval of the system, the initial costs to the state and the legislative attention which will be focused on renewing the Authority's enabling legislation during the 1982 session. The Authority's enabling act contains an automatic "sunset" provision which requires renewal prior to October 1, 1982.

Review Criteria

The basic criteria used by the Committee to evaluate proposed rulemaking are

listed in Section 220.900 of the Committee's Operational Rules (see Appendix B, pages 247-248). The thirteen criteria listed there can be briefly summarized as follows:

1. Legal Authority
2. Statutory Authority and Legislative Intent
3. Constitutional Requirements and Other Law
4. Standards and Criteria for exercising Discretion
5. Justification and Rationale
6. Economic and Budgetary Effects
7. Simplicity and Clarity of Language
8. Technical and Grammatical Errors
9. Administrative Procedure Act Requirements
10. Rules Division Requirements
11. Other Statutory Procedural Requirements
12. Agency's Rulemaking Requirements
13. Responsiveness to Public Comments

The majority of the rulemakings which were found to be objectionable during the past year involved a lack of standards and criteria for exercising discretion or conflicts with the agency's authorizing statute. This indicates the fact that the Committee has continued to focus its review on the more substantive of the review criteria. A number of rulemakings have also raised procedural objections, especially violations of Section 5.01 of the Administrative Procedure Act.

One procedural issue which has been considered in relation to several different rulemakings is the extent of the changes an agency may make in a rulemaking between the public notice of proposed rulemaking which is published in the Illinois Register and the second notice which is submitted directly to the Joint Committee. The lack of extensive public awareness of the contents of the second notice makes this issue more difficult. If the second notice is substantially different than the first notice, the agency should be required to initiate a new rulemaking. But the exact extent or permissible changes is difficult to define.

The Committee has informally developed three general guidelines in deciding whether the second notice differs so significantly from the first notice that it violates the Administrative Procedure Act. These guidelines are: (1) The second notice should have the same purpose and intent as the first notice. (2) The affected public should be able to reasonably anticipate the possibility of each of the second notice provisions from examining the first notice. (3) Any changes in the rulemaking between the notices should be in response to public comments.

The recent amendment to Section 7.02(c) of the Administrative Procedure Act, which authorizes the Committee to publish a list of second notices it has received, should help alleviate the problems caused by the lack of public awareness that a second notice has been submitted.

Significant Objections

Each of the specific statements of objection issued by the Joint Committee during the 1981 is listed in Section Three of this report (pages XX-XX). However, several of these objections deserve some explanation because of their significance.

In January 1981, the Joint Committee objected to rules proposed by the Department of Children and Family Services which attempted to clarify situations in which the Department's authority to regulate child care facilities overlapped with local governmental units' authority. While the aim of the rules is laudable, the Joint Committee objected to the rules as violative of the home rule provisions of the Illinois Constitution. The Department modified the rules in response to the Committee's objections. The full text of the specific objection appears on page 85.

Rules proposed by the State Board of Education to govern special education were found to be objectionable in February 1981. The basis of the Committee's objection was the failure of the rules to delineate clearly the financial responsibility of local school districts and the Board for providing Special Education. The Committee also objected to the Board's apparent attempt to extend its authority to reviewing individual placements rather than prescribing procedures for local school districts to decide on individual placements. The specific objections are presented on pages 127-128.

Another significant objection involved rules proposed by the Department of Insurance. The rules were intended to implement new legislation allowing companies or associations to establish self-insurance pools for Workers' Compensation coverage. The Committee objected because it believed that the Department was interpreting the new legislation too restrictively. Significant revisions resulted from the Committee's objections and other legislative activity. The specific objections of the Committee are listed on page 90.

In November 1981, the Committee considered a large set of rules proposed by the Department of Mines and Minerals regulating surface mining and reclamation of mined land. A number of aspects of the rules were controversial, particularly due to anticipated changes in federal law and the federal Office of Surface Mining in the Department of the Interior. The Committee objected to several sections of the rules because of conflicts with the existing federal law. The text of the Committee's objections appears on page 96-97.

These significant objections illustrate the Committee's effectiveness in dealing with controversial and complex issues involved in proposed rules.

REVIEW OF EMERGENCY AND PEREMPTORY RULEMAKING

The Joint Committee's review of emergency and preemptory rulemaking was initiated in the fall of 1979. Each of the over 50 emergency and 40 preemptory rulemakings were reviewed during 1981. Since these rulemaking procedures allow agencies to bypass the public comment period required under the normal rulemaking process, the Joint Committee is concerned that these procedures only be used in the limited circumstances specified in the Administrative Procedure Act.

The reduction in the number of emergency rules adopted by agencies compared to 1980, may indicate that the Committee's review was useful in limiting the use of this process by agencies. The Committee issued four formal objections to emergency and preemptory rulemakings during 1981, indicating that improper use of these extraordinary procedures is beginning to decrease substantially.

The primary focus of the Committee's review of emergency and preemptory rules is insuring that they comply with the requirements of Sections 5.02 and 5.03 of the Administrative Procedure Act (see Appendix A, pages 224-225). These sections require specific conditions which must exist before the agency can properly adopt rules through these procedures.

Section 5.02 governing emergency rulemaking basically requires (1) the existence of an emergency affecting the public, (2) a necessity for the rule in direct response to the emergency, (3) time constraints which make the adoption of the rule through the normal rulemaking process impossible, and (4) a written statement by the agency of how these conditions have been met. It is these requirements which the Joint Committee seeks to review in its examination of emergency rules.

Similar conditions are specified in Section 5.03 for the adoption of rules through the preemptory rulemaking process. Under this Section, three conditions must be met for an agency to adopt a rule through the preemptory rulemaking process: (1) The rules must be required by federal or court action. (2) The agency must be precluded from adopting the rules under the normal rulemaking process; it must be possible for the agency to go through the process, not just inconvenient. (3) The agency must be precluded from exercising any discretion as to the content of the

rule. The language limits the adoption of peremptory rulemaking to very specific circumstances, so that the public information value of the normal rulemaking process as well as the public participation and input are not bypassed.

A sharp rise in the use of peremptory rulemaking was noted in 1981. The increase was almost totally due to use of this process by Department of Public Aid. Seventeen peremptory rules were filed by the Department of Public Aid as a result of the Federal Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35). Both the Illinois Aid to Families with Dependent Children and Food Stamp programs were extensively amended for these rulemakings to reflect the changes in the federal budget.

In addition to reviewing these rules for compliance with these procedural requirements, the Committee also examines the rules based on the criteria used in the normal review of proposed rules. This review by the Joint Committee may be the only formal review procedure outside the adopting agency for these rules. This is especially important for peremptory rules because of their permanent effectiveness.

The Joint Committee adopted rules which listed specific criteria for the review of emergency and peremptory rulemaking in the fall of 1979. These rules as amended are presented in this report in Appendix B (see pages 252-262). The criteria for reviewing emergency rulemakings are listed in Sections 230.400 and 230.500, while the parallel criteria for reviewing peremptory rulemakings are listed in Sections 240.500 and 240.600.

While the number of formal objections issued as a result of the Committee's review of emergency and peremptory rulemakings is not large, existence of this review mechanism may be having an impact on the procedures followed by agencies. Careful scrutiny of agencies' use of these extraordinary procedures will continue to insure their proper use.

FIVE-YEAR REVIEW PROGRAM

The review of one major category of rules in the five-year review program was completed during 1981. This category included nine sets of rules which the Committee had classified under labor laws and consumer protection. The rules of the Department of Labor governing unemployment insurance constituted a significant focus of this review because of their complexity, unique problems, and broad impact on Illinois business, labor and citizens.

The review of three other categories was completed during 1981 and are now awaiting formal responses by the agencies and action by the full Joint Committee. These categories include (1) rules of the Departments of Public Health and Agriculture classified under business regulation, (2) rules of the Department of Revenue classified under business regulation and (3) state travel rules of the Department of Administrative Services and other agencies. Preliminary reports have been developed by the Joint Committee staff on each of these groups of rules. The Joint Committee is expected to take formal action on the staff recommendations presented in these three reports early in 1982.

This section of the Annual Report will briefly summarize the process followed in the five-year review program and then will focus on presenting the results of the completed reviews in some detail. The specific objections and recommendations issued as a result of five-year review efforts are included in Section Three of this report (pages 84-162). Follow-up activities which resulted from earlier portions of the five-year review are also discussed in this section.

Five-Year Review Process

As the basic framework for the five-year review, the Joint Committee has classified all of the existing rules of all state agencies into a number of subject areas. As agencies adopt new rules, they are added to the classification scheme and amended rules are checked and reclassified. These subject areas include the specific categories listed in Section 7.08 of the Administrative Procedure Act (see Appendix A, page 235) as well as a number of other categories which were added during the initial classification process. Several implementation problems with the classification

scheme have been resolved and the scheme now provides a firm, but flexible, structure for the program. Copies of the complete classification, which includes some valuable indexes to all existing state agency rules, are available from the Joint Committee office.

Each of the approximately fifty subject categories have been slated by the Joint Committee for review during a specific year of the review cycle. This schedule is contained in Sections 250.400--250.800 of the Committee's operational rules (see Appendix B, pages 271-273). While the actual review process has proceeded somewhat slower than anticipated in the schedule, virtually all of the categories and rules scheduled for review during the first year have been reviewed and initial reviews of all of the second-year categories and rules are well underway. As the Committee gains experience in the operation of this program, it is expected that the review pace will increase to correspond more closely to the schedule.

The review process itself is conducted in four basic stages. The initial stage involves requesting specific information from each of the agencies with rules slated for review. This requested information concerns statutory authority, administrative aspects, costs, extent of compliance, economic effects and public need for the regulation. The specific questions asked are presented in Section 250.1000 of the Committee's Operational Rules (see Appendix B, page 273-274). The answers to these basic background questions provide the Joint Committee with information which is essential for a thorough review of the rules. Since this information is basic, agencies should already be maintaining this type of information about each set of its rules, so the questions will not place an undue burden on agencies.

The second stage of the review process involves public hearings on the rules and intensive research by the Joint Committee staff. Subcommittees of the Joint Committee are usually formed to hold public hearings to gather comments on the rules. A detailed list of specific questions and potential problems with the individual provisions of the rules results from these hearings and the staff written responses by the agencies, informal staff-level conferences, and additional research are utilized to resolve as many of the questions and problems as possible. Often agencies will agree to initiate appropriate rulemaking to correct deficiencies which are noted by the staff. In other cases, the agencies adequately explain the purpose and language of

the provision. When a specific issue can not be resolved, the staff attempts to clarify the basis of the disagreement so that the issue can be referred to the Joint Committee for action.

The preparation of a "preliminary report" for consideration by the Joint Committee and agency officials constitutes the third stage of the review process. Each of the issues raised, agreements reached, and recommendations for action which emerged during the staff review are outlined in the report. Agencies then provide written responses to the issues and recommendations in the report and Committee members offer comments and suggestions on the issues covered in the report. These reactions and responses are incorporated in the "Final Report" which is presented to the Committee for formal action.

The fourth stage of the review process consists of the formal Joint Committee hearing. Agency representatives present their position on the recommendations under questioning by the Committee members and action is taken to accept or reject each of the recommendations. Actions may involve objections to specific provisions, development of suggested legislation, or urging appropriate administrative or rulemaking action by the agencies. Often these hearings involve long hours of careful questions, responses and deliberation.

The final stage of the process involves follow-up actions by the Committee. The Committee staff monitors and reports on agency actions to correct problems discovered during the review. In some cases special subcommittees of the Joint Committee have been established to undertake special follow-up activities in significant areas. The staff prepares any necessary follow-up reports to insure that the intended results of the Committee's actions are achieved.

Table Four on the following page indicates the location in each of these stages of the subject areas which are currently under review. While this table is oversimplified, it does indicate the general status of the program at the end of 1981.

Regulation of Occupations

The subject area of regulation of occupations was the first subject area completed under the five-year review program. The review process was completed

during the 1980 (see 1980 Annual Report, pages 83-93), but several significant follow-up activities in relation to this review were conducted during 1981 and are continuing.

One result of the review was a comprehensive management audit of the Licensing and Enforcement functions of the Department of Registration and Education. At the Joint Committee's request, the Audit Commission directed the Auditor General to conduct the audit, which was completed in October 1981. The audit included a recommendation for comprehensive revision of the licensing statutes to facilitate uniform administration.

To implement this recommendation for legislative action the Audit Commission and the Joint Committee have formed a joint subcommittee to review the draft legislation developed by the Auditor General. It is expected that the resulting legislation will be considered during the 1983 legislative session.

The Joint Committee also continued to monitor the progress of the Department of Registration and Education and other agencies in implementing the agreements reached during the review. Numerous amendments to rules resulted from the review. The Committee issued a supplemental report in the fall of 1981, which detailed the specific actions resulting from the review.

Consumer Protection and Labor Laws

The major effort of the five-year review program during 1981 was the completion of the review of rules classified under Consumer Protection and Labor Laws.

Included in this subject area were the rules of the Department of Labor governing Unemployment Insurance. Over fifty specific recommendations and several objections to specific provisions in these rules alone resulted from this review. In addition to the rules officially adopted by the Department, the Committee staff also reviewed over forty volumes of precedent manuals, policy bulletins and memoranda in connection with the review of these rules. Many of the resulting recommendations involved policies enunciated in these materials which seemed to be "rules" under the definition in the Administrative Procedure Act. Other recommendations involved

provisions in the Unemployment Insurance Act which seemed to require rules, although the Department had never adopted the necessary rules to implement the provisions.

The several specific objections to the Unemployment Insurance rules are listed on pages 91-95. The numerous specific recommendations resulting from this review of these rules are presented on pages 130-160. The final report on these rules also included a detailed outline suggesting an improved organizational structure for the rules.

To insure that the recommended changes are implemented smoothly and promptly, the Joint Committee established a subcommittee headed by Representative Glen L. Bower (R.-Effingham) to monitor the Department's progress. Several remedial rulemakings have already been initiated by the Department to correct some of the deficiencies noted in the Committee's review.

Several other less important sets of rules were also included in this subject area. These rules included the rules of the Office of Consumer Services, consumer fraud rules of the Attorney General, and child labor and several other sets of rules of the Department of Labor. The specific objections to the Office of Consumer Service rules are listed on pages 120-124, and the specific objections to the Attorney General's rules are listed on pages 104-109. Most of these objections and the other deficiencies noted in the rules are expected to be resolved through rulemaking by the agencies.

Business Regulation

A large number of rules are being reviewed under the subject area of business regulation. Preliminary reports of the staff findings and recommendations have been developed on two major portions on this subject area: (1) Rules of the Department of Agriculture and Public Health, and (2) Rules of the Department of Revenue. The Committee is expected to take formal action on these staff recommendations in early 1982.

Among the rules which are still being reviewed in this subject area are most of the rules of the Department of Insurance and the Illinois Racing Board. These segments of this review should be completed in early 1982.

Other Subject Areas Under Reveiw

As indicated in Table Four, the review of rules in a number of other subject areas has been initiated. The rules classified under state travel are currently at the preliminary report stage and should be acted on before the other groups of rules. As the preliminary reports are completed, and agency responses to the staff findings and recommendations are received, the Committee will take formal action on the reports.

During 1981 public hearings were held on each of the groups of rules scheduled for review during the second year of the review cycle. Many of the comments received at these hearings will be invaluable in directing the review process.

TABLE FOUR: STATUS OF CURRENT FIVE-YEAR REVIEW CATEGORIES

<u>Stage One: Initial Questions</u>	<u>Stage Two: Public Hearings And Staff Research</u>	<u>Stage Three: Preliminary Report</u>	<u>Stage Four: Final Report and Committee Hearing</u>	<u>Stage Five: Follow-up Activities</u>
Human Resources/ State Adult Institutions	Public Utilities	Industry and Labor/ Business Regulation (Volumes Three-- Five)	Industry and Labor/ Business Regulation/ Volume One: Departments of Public Health and Agriculture	Industry and Labor/ Labor Laws and Consumer Protection
Natural Resources/ Land Pollution Control	Education and Special Education Cultural Resources/ Special Education			
Human Resources/ Public Health	Financial Institutions	Education and Cultural Resources/ Vocational and Professional Education	Industrial and Labor/ Business Regulation/ Volume Two: Department of Revenue	Industry and Labor/ Regulation of Occupations
	Government Management/ State Buildings Construction and Maintenance	Human Resources Grants for Medical Services	Government Management/ State Travel	
		Natural Resources/ Wildlife Management		

COMPLAINT REVIEW PROGRAM

In 1979, the Joint Committee initiated a complaint review program which provides the public with the opportunity to obtain Joint Committee reviews of questionable regulations and policies which affect them. By enabling the Joint Committee to review and evaluate rulemaking based upon complaints received, the program functions as a supplement to the two major rules review programs, the review of newly proposed rulemakings and the five-year review of existing rules.

By reviewing rules on the basis of a complaint, it is not necessary to wait until the rule in question is either amended or addressed in the course of the five-year review program. It provides an ideal opportunity for the examination of rules and agency compliance with the Illinois Administrative Procedure Act.

The authority to review rules based upon complaints is provided to the Joint Committee through the broad language of Sections 7.04 and 7.07 of the Illinois Administrative Procedure Act. Section 7.04 allows the Joint Committee to "undertake studies and investigations concerning rulemaking and agency rules." Section 7.04 also requires the Joint Committee to "monitor and investigate" agency compliance with the provisions of the Illinois Administrative Procedure Act, "make periodic investigations of the rulemaking activities of all state agencies, and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy."

Section 7.07 of the Act authorizes the issuance of objections to existing rules and assigns to the Joint Committee the task of examining "any rule for the purpose of determining whether the rule is within the statutory authority upon which it is based, and whether the rule is in proper form."

As outlined in the Joint Committee's operational rules (see Appendix B, pages 278-282) the complaint review process is relatively simple. As complaints are received the Joint Committee staff conducts an initial review to determine the need for a full complaint investigation. Much of the communication received by the Joint Committee requires only the supplying of basic information, copies of rules or referral to the appropriate agency. The Committee also receives inquiries concerning

the applicability of the Illinois Administrative Procedure Act as it relates to certain agencies and policies. These requests generally do not require the same amount of time as do other more complex complaint matters. In situations requiring only a response from the Committee staff, the necessary information is provided. When more difficult situations occur involving a serious legal or substantive issues raised by the public in relation to agency rules the formal complaint review process is begun.

In 1981 the Joint Committee held formal hearings on three complaints. The first complaint concerned the Department of Mines and Minerals' rules pertaining to reclamation of prime farmland after mining.

The second complaint related to the State Board of Education's rules regarding the certification of teachers educated at out-of-state institutions. The specific objections issued at the hearing appear on pages 124-127.

The third complaint resulting in a formal hearing questioned the issuance of an "interpretative bulletin" by the Department of Administrative Services concerning state-owned vehicles. No formal objection was issued, but the Department agreed to withdraw the bulletin and initiated appropriate rulemaking.

The Joint Committee also resolved nine other complaints not requiring formal action. Of these nine complaints, three were resolved when the Joint Committee initiated discussions between the complaint and the involved agency, one was resolved due to the agency's agreement to promulgate rules, one by referral to the Sunset Committee, one by referral to the five-year review program and one complaint was dismissed because the issue complained of was statutory in nature.

This discussion of the complaints resolved by the Joint Committee illustrates the effectiveness of the detailed oversight of agency rules provided for by the Committee. As public awareness of the availability and effectiveness of the Joint Committee's complaint review program becomes greater, the number of complaints received, reviewed and resolved is expected to increase.

PUBLIC ACT REVIEW

The Joint Committee reviews each new public act to determine the impact the legislation may have on state agency rules. The purpose of this review is to determine what laws enacted by the General Assembly may require new rules or rules changes for their proper implementation. Public acts may or may not explicitly state that rulemaking is necessary, but many pieces of legislation implicitly require rulemaking. For example, an act may amend a section of a statute granting a state agency the authority to promulgate rules and regulations, requiring corresponding changes in the rules. Another implied rulemaking requirement is created when a public act adds more regulatory powers to an agency's functions.

The Administrative Procedure Act anticipated the necessity of keeping track of the various forces and agencies that affect administrative law and procedure. Section 7.05 of the Administrative Procedure Act requires the Committee to "maintain a review program to study the impact of legislative changes, court rulings, and administrative action on agency rules and rulemaking." (see Appendix A pages XX-XX).

The review of new public acts implements this responsibility of monitoring legislation and its impact on rules. This review process through this Annual Report of the Joint Committee, keeps the General Assembly informed of the progress of agencies in effectuating recently enacted bills. Additionally the review process informs agencies that rulemaking may be required and encourages prompt rulemaking by the agencies rather than resort to emergency rules, or ad hoc policy-making.

It was apparent from these two years of this program (1979 and 1980) that State agencies disagree frequently with the Joint Committee's opinion on whether rulemaking is necessary. In fact, only one public act was noted as not requiring rulemaking, which was eventually implemented by rulemaking. Many agencies do not respond to the Joint Committee determinations. Further, many agencies have lengthy delays between the effective date of the legislation and the date when rules are published and finally adopted.

In 1981, the General Assembly enacted 738 public act that were reviewed by the Joint Committee. Of these, 272 were determined to require further rulemaking by administrative agencies. Although agency responses are not complete, the result thus far indicate that the Joint Committee and agencies agree on the need for rules or amendments more than in previous years and that agencies are promulgating rules much sooner following the effective date of the public act. However, far from total agreement exists between agencies and the Joint Committee whether specific public acts require rules. At times, and agency will propose rules when the Joint Committee believes none are needed; other instances find agencies disagreeing with the Joint Committee's determination that rulemaking is necessary. Cooperation from agencies in responding to inquiries has improved.

Detailed results of the review are presented in the following two tables. Table Five summarizes the number of public acts and subsequent rulemakings by agency, while Table Six lists each of the acts and the responses by the agencies. One positive result of the public act review process is the increased awareness of the need to change rules in response to changes in the law, and the marked improvement of earlier rulemaking by a number of departments and agencies.

TABLE FIVE: NUMBER OF 1981 PUBLIC ACTS WHICH
COULD REQUIRE RULEMAKING BY AGENCY

	Number of Public Acts Which Could Require <u>Rulemaking</u>	Number of Rulemakings <u>Initiated</u>
<u>Code Departments</u>		
Agriculture	7	2
Children and Family Services	5	
Commerce and Community Affairs	2	
Conservation	9	1
Corrections	4	
Energy and Natural Resources*	5	
Financial Institutions	4	
Human Rights	2	1
Insurance	15	2
Labor	4	2
Law Enforcement	1	
Mental Health and Developmental Disabilities	4	
Military and Navel	1	
Mines and Minerals	2	
Personnel	3	
Public Aid	7	2
Public Health	21	2
Registration and Education	20	3
Rehabilitation Services	1	
Revenue	29	1
Transportation	6	
Veterans' Affairs	11	2
<u>Elected Officials</u>		
Attorney General	1	
Auditor General	3	
Comptroller	7	
Secretary of State	19	3
Treasurer	2	
<u>Other Agencies</u>		
Commissioner of Banks and Trust Companies	6	
Bureau of the Budget	1	

Capital Development Board	1	
Illinois Commerce Commission	3	1
Dangerous Drugs Commission	1	
Board of Elections	4	
Environmental Facilities Financing Authority	1	
Environmental Protection Agency	5	2
Farm Development Authority	1	
State Fire Marshal	1	
Illinois Housing Development Authority	2	
Human Rights Commission	1	
Illinois Industrial Commission	1	
Illinois Industrial Development Authority	1	
State Board of Investments	1	
Illinois Liquor Control Commission	3	
Local Governmental Law Enforcement Officers Training Board	1	
Department of Law Enforcement Merit Board	1	
Nature Preserves Commission	1	
Pollution Control Board	5	1
Governor's Purchased Care Review Board	1	
Illinois Racing Board	1	
Commissioner of Savings & Loan Associations	1	
State Employees' Retirement System	7	2

Educational Agencies

State Board of Education	14	
Board of Higher Education	4	2
Illinois State Scholarship Commission	3	
Southern Illinois University	2	
University Civil Service Merit Board	1	1
University of Illinois	1	

Legislative Commissions

Energy Resources Commission	1	
TOTAL	272	30

*Newly created or reorganized agency

<u>Public Act</u>	<u>Subject</u>	<u>Agency</u>	<u>Response</u>
82-19	Criminal Code-Public Officials	Department of Mental Health and Developmental Disabilities	No Response
82-21	Corporation-Indemnify Employees	Department of Law Enforcement	Do not believe rules are necessary
82-22	Housing Development-Loan-Resident Property	Office of the Commissioner of Banks and Trust Companies	No Response
82-23	Sales Tax-Machinery Exemption	Department of Labor	Agree and have proposed rules
82-24	Farm Equipment No. 100% Exclusion	Department of Revenue	No Response
82-25	State Fair-Admission Refund	Department of Revenue	No Response
82-96	Racing Board-Wager of other States	Department of Agriculture	Agree and will propose rules
82-99	War Vets-Childrens Benefits	Illinois Racing Board	Agree and will propose rules
82-103	Medical Services-Ambulance Regulation	Department of Veterans' Affairs	Agree and have proposed rules
82-106	Change Tax Credit-on Illinois Beer	Department of Public Health	Do not believe rules are necessary
82-108	Insured Right of Privacy	Department of Revenue	No Response
82-109	Historical Plaques-Boats	Department of Insurance	No Response
82-110	Civil Administrative Code-DOT Master Plan	Department of Conservation	No Response
82-111	Vehicle Code-School Bus Weight Capacity	Department of Transportation	No Response
82-117	License Plates-Medal of Honor	Office of the Secretary of State	Do not believe rules are necessary
82-118	Vehicle Code-Pow-License Plates	Office of the Secretary of State	Do not believe rules are necessary
82-121	Revenue Act-Farmland Assessments	Department of Revenue	No Response
82-130	Business Corporations-Taxes	Office of the Secretary of State	Do not believe rules are necessary
82-131	Vehicle Code-Blank Title-Felony	Office of the Secretary of State	Do not believe rules are necessary
82-134	Revenue Act-Coal Device Tax	Pollution Control Board	Agree and will propose rules
82-136	Vehicle Code-Reduction of Fees	Office of the Secretary of State	Do not believe rules are necessary
82-138	Vehicle Code-Self Insured	Department of Insurance	No Response
82-139	Military & Navy-Retirement	Office of the Secretary of State	Agree and have proposed rules
82-140	School Code-Withheld Dues	Department of Military & Naval State Board of Education	Do not believe rules are necessary
			No Response

82-142 82-143	Hospital License Board-Podiatrist School Code-Reports to Board of Education	Department of Public Health State Board of Education	Do not believe rules are necessary No Response
82-144 82-145	Marriage-License Blood Test Pension Code-Deferred Compensation	Department of Public Health Department of Revenue State Board of Investment Department of Insurance	Do not believe rules are necessary No Response No Response No Response
82-147	Insurance Code-Replace Life Insurance	Department of Registration and Education	Do not believe rules are necessary
82-148	Collection Agency Bond	Department of Registration and Education	Agree and will propose rules
82-149	Register & Education-Renewal of Licenses	Department of Registration and Education	Agree and have proposed rules No Response
82-150	Agriculture Fair Act-Investments	Department of Agriculture	Agree and have proposed rules
82-152	Fuel Tax-Define Proof Gallon	Department of Revenue	Agree and have proposed rules No Response
82-154	Nursing Home-Written Contracts	Department of Public Health	Agree and will propose rules
82-157	School Code-Parents-Scholarship Loan	Illinois State Scholarship Commission	Agree and will propose rules
82-162	Prescription & Drug Reg.	Department of Registration and Education	Do not believe rules are necessary
82-170	Medical & Vet. Practice-Licenses	Department of Registration and Education	Do not believe rules are necessary Agree and will propose rules
82-171 82-172	Savings & Loan Branch Offices Weather Modification-Licenses	Office of the Secretary of State Department of Energy and Natural Resources	Do not believe rules are necessary Agree and will propose rules
82-173 82-183	Comptroller-Replace Warrant Community Service For Mentally Illinois	Office of Comptroller Department of Mental Health and Developmental Disabilities	Do not believe rules are necessary No Response
82-184 82-189 82-191	Nursing Home Training Courses Migrant Camps-Health Standards Pension Code-Security Employees	Department of Public Health Department of Public Health State Employee's Retirement System	Agree and will propose rules Do not believe rules are necessary Do not believe rules are necessary
82-195 82-198 82-200	Snowmobile Registration Fee Vehicle Code-Semitrailer Length Sunset-Detection of Deception	Department of Conservation Office of the Secretary of State Department of Registration and Education	No Response Do not believe rules are necessary Agree and have proposed rules
82-201	Promotion Activity-Development Attraction	Department of Commerce and Community Affairs	No Response
82-205	Hearing Impaired-Sign Language	Department of Mental Health and Developmental Disabilities	No Response
82-209	Release Mental-Medical Records	Department of Corrections	Do not believe rules are necessary

82-210	Insurance-Guaranty Fund	Department of Insurance	No Response
82-211	Health Maintenance Organization	Department of Insurance	No Response
82-214	Motor Fuel Tax-add Gasohol	Department of Revenue	No Response
82-215	Health Statistics	Department of Public Health	Agree and will propose rules
82-231	Vehicles-Flatbed Steel Rolls	Department of Transportation	No Response
82-235	Abolish Building Authority Act	Capital Development Board	No Response
82-237	Drugs-Generic Substitution	Department of Public Health	Agree and will propose rules
82-243	Water Well Code-Enforcement	Department of Mines and Minerals	No Response
82-248	Developers-Tax Refund-Credit	Department of Revenue	No Response
82-250	Wage Payment & Collection Act	Department of Labor	Do not believe rules are necessary
82-255	Meat & Poultry Inspect-Define	Department of Agriculture	Do not believe rules are necessary
82-257	Foreign Banks-Reserves	Banks and Trust	No Response
82-259	Health Services-Nursing Grants	State Board of Higher Education	No Response
82-263	Abortion-No Pregnancy-Penalty	Department of Public Health	Do not believe rules are necessary
82-265	Tax Liens-Releases-Filing	Department of Labor	Do not believe rules are necessary
82-272	Forest Preserve District-President	Department of Conservation	No Response
		Department of Energy and Natural Resources	Do not believe rules are necessary
82-273	Comptroller-Voucher Review	Office of the Comptroller	Do not believe rules are necessary
	Office of the Treasurer	No Response	
82-274	Water Company Invested Capital Tax	Department of Revenue	No Response
82-275	Drugs for Investigational Use	Department of Public Health	Do not believe rules are necessary
82-276	Medical School Accreditation	Department of Registration and Education	No Response
82-277	Repeal DES Act	Department of Public Health	Do not believe rules are necessary
82-278	Drivers License-Anatomical Gifts	Office of the Secretary of State	Agree and will propose rules
82-279	Property Tax-Accelerated Billings	Department of Revenue	No Response
82-289	Amusement Ride Safety Act	Department of Insurance	No Response
82-294	Reverse Mortgage Loan-Purposes	Office of the Commissioner of Banks and Trust Companies	Agree and will propose rules
		Department of Financial Institutions	No Response
		Office of the Commissioner of Savings and Loan Companies	No Response
82-296	Message Tax Act-Clarifies	Department of Revenue	No Response
82-297	Comptroller-Voucher Review	Office of the Comptroller	Do not believe rules are necessary
		Office of the Treasurer	No Response
82-298	Admin. Proc.-File Rules-Notice	Office of the Secretary of State	Agree and have proposed rules
82-300	SIU-Medical School Payments Board of Trustees	Southern Illinois University	Do not believe rules are necessary
		State Board of Higher Education	Do not believe rules are necessary

82-301	Replace County Board of Assessor	Department of Revenue	No Response
82-302	Universities-Police Power	State Board of Elections Southern Illinois University Board of Trustees	No Response Do not believe rules are necessary No Response
82-304	Pensions-Alternative Retirement Annuity	Board of Trustees of the University of Illinois	No Response
82-310	Pensions-Annuities-Minimums	State Board of Higher Education Department of Conservation	Do not believe rules are necessary No Response
82-311	Vehicle Code-Implied Consent	State Employee's Retirement System	Agree and have proposed rules
82-314	Property Tax-Abatement	Office of the Secretary of State Department of Public Health Department of Financial Institutions	Agree and have proposed rules Agree and have adopted rules No Response
82-315	Income Tax Investment Credit	Department of Revenue	No Response
82-316	Property Tax-Abatement	Department of Revenue	No Response
82-319	Repeals the Bail Bond Act	Department of Insurance	No Response
82-320	Registration & Education Rules-Exam Committees	Department of Registration and Education	No Response
82-321	Cigarettee Taxes-Payment-Bonding	Department of Revenue	No Response
82-324	Township Assessors-No Bond	Department of Revenue	No Response
82-325	State Finance-Appropriation-Lease	Office of the Comptroller Bureau of the Budget	Do not believe rules are necessary Do not believe rules are necessary
82-326	Revenue Assessing Courses	Department of Revenue	No Response
82-327	Work Comp.-Fix Insurance Premiums	Department of Insurance	No Response
82-336	Real Estate License Fund	Department of Registration and Education	No Response
82-337	Great Real Estate Research Fund	Department of Registration and Education	No Response
82-340	Ban Housing Discrimination	Department of Human Rights	Do not believe rules are necessary
82-351	Training for Security Guards	Department of Registration and Education	No Response
82-352	Insurance Code-Toll Period of Limitation	Department of Revenue	No Response
82-359	Insurance Code-Sexual Assault	Department of Insurance	No Response
82-361	Reimburse Teachers of Handicapped	State Board of Education	No Response
82-362	Amend-School Code-Special Education plan	State Board of Education	No Response
82-363	Located Abandoned Vehicle Owner	Office of the Secretary of State	Do not believe rules are necessary

82-364	School Problems Comm.-Report Date	State Board of Education	No Response
82-366	Dentist-Mark Prosthesis	Department of Registration and Education	No Response
82-367	Street Light District-Notice	State Board of Elections	No Response
82-368	Auditing Act-Rule Making	Office of the Auditor General	Do not believe rules are necessary
82-369	Auditor General Qualifications	Office of the Auditor General	Do not believe rules are necessary
82-371	Pension-Downstate Teachers	State Board of Elections	No Response
82-373	Election Code-Change Clerk Titles	State Board of Elections	No Response
82-377	Snowmobiles-Operate on Roadway	Department of Conservation	No Response
82-379	Industrial Development	Industrial Development Authority	No Response
82-380	Authority-Increases Bonds	Environmental Protection Agency	No Response
	EPA-Delegate Admin. Duties	Pollution Control Board	Not subject to APA
82-382	Public Adjuster Regulatory Act	Department of Insurance	No Response
82-383	Amends Anti-Pollution Bond Act	Environmental Protection Agency	No Response
82-391	Direct Deposit-State Paychecks	Office of the Comptroller	Agree and will propose rules
82-393	Public Water Supply Protection	Environmental Protection Agency	No Response
82-402	Energy Efficiency-Architects	Department of Registration and Education	No Response
82-404	Lottery-Town Collector-Limit	Department of Revenue	No Response
	Lottery Control Board		
82-411	Modify Controlled Substance Act	Dangerous Drugs Commission	Do not believe rules are necessary
82-413	Risk Mgt. Revolving Fund-Repeal	Department of Personnel	No Response
82-414	Snowmobiles-Head Lamp Safety	Department of Conservation	No Response
82-417	Auditor General-Income Tax Records	Office of the Auditor General	Do not believe rules are necessary
82-433	Medical Transport Vehicle-Regs	Office of the Secretary of State	Do not believe rules are necessary
		Department of Public Aid	No Response
82-434	Fish Code-Auction Equipment	Department of Transportation	No Response
82-439	Public Aid-AFDC-Work Requirement	Department of Conservation	No Response
82-441	Child Care-Facility Licensing	Department of Public Aid	No Response
		Department of Children and Family Services	Agree and will propose rules
82-445	Ill. Natural Areas Preservation	Office of the Attorney General	No Response
		Department of Conservation	No Response
82-453	Adoption Act- Child Placement	Nature Preserves Commission	Agree and will propose rules
		Department of Children and Family Services	Agree and will propose rules
82-454	School Nurse-Special Education Reimburse	State Board of Education	No Response
		Governor's Purchased Care Review Board	No Response

82-455	Amend Definition of Day Care	Department of Children and Family Services	Agree and will propose rules
82-456	School Code-Placement in Facility	State Board of Education	No Response
82-465	Private Employment Agencies	Department of Labor	No Response
82-471	Emergency Bank Mergers-Allows	Office of the Commissioner of Banks and Trust Companies	No Response
82-480	Dram Shop-Gallons of Wine Sold	Illinois Liquor Control Commission	No Response
82-484	School Code-District Finances	State Board of Education	No Response
82-486	Coal & Energy Devel Bond Act	Department of Energy and Natural Resources	Agree and will propose rules
82-488	Family Member Sign Death Certificate	Energy Resources Commission	Agree and will propose rules
82-490	Banks Outside Deposits-Liability	Department of Public Health	Do not believe rules are necessary
82-491	DCCA-Coal Commerce Office	Office of the Commissioner of Banks and Trust Companies	No Response
82-494	School Code-Aid-Academic Grants	Department of Public Health Community Affairs	Do not believe rules are necessary
82-497	Public Aid-Annual Report to G.A.	Illinois State Scholarship Commission	No Response
82-498	Insurance Code-Technical Charges	Department of Public Aid	No Response
82-499	Standard Fire Policy	Department of Insurance	No Response
82-500	Veteran Affairs-Vets Home Care	Department of Veterans' Affairs	Agree and have proposed rules
82-501	Reyes Syndrome Reporting Act	Department of Public Health	Agree and will propose rules
82-503	Cities-Retain Trust Account	Department of Transportation	No Response
82-505	Liquor Act-Purchasing Quantity	Illinois Liquor Control Commission	No Response
82-506	Expand Coop. Powers-Contracts	Office of the Secretary of State	Do not believe rules are necessary
82-510	Divorce-Moving Child out of state	State Employee's Retirement System	No Response
82-514	DOT-Regulate Barge Fleet Areas	Department of Transportation	No Response
82-518	Farm Dev. Authority Act	Farm Development Authority	No Response
82-520	Mfn. Pension-1% benefit Increase	State Employee's Retirement System	Do not believe rules are necessary
		Teacher Retirement System	No Response
		State Universities Retirement System	Do not believe rules are necessary
82-521	Pharmacy-Eliminate Apprentice	Department of Registration and Education	No Response
82-522	Sunset-Eliminate Athletic Exhibition Registration Act	Department of Registration and Education	No Response

82-524	Univ. Civil Service-Probation Period	State Universities Civil Service System Merit Board	No Response
82-530	Housing Development-Loan-Resident Property	Illinois Housing Development Authority	No Response
82-532	Vehicle Code-Drivers for Elderly	Office of the Secretary of State	Do not believe rules are necessary
82-537	Schools Reimburse for transport	State Board of Education	No Response
82-540	EPA-Emission Source Permits	Environmental Protection Agency	No Response
82-541	Medical Studies-Confidentiality	Pollution Control Board	No Response
82-544	EPA-Pollution Control Board-Decisions	Department of Public Aid	Do not believe rules are necessary
82-545	Environment Facility Finance	Pollution Control Board	Do not believe rules are necessary
82-546	Housing Devel. Act-Home Mortgage Authority	Environmental Facilities Financing Authority	No Response
82-547	Life Care Facilities	Illinois Housing Development	No Response
82-549	Rehabilitation Services-Charge Designation	Department of Public Health Department of Rehabilitation Services	Agree and will propose rules Agree and will propose rules
82-552	Oil & Gas-Unknown Owners	Department of Public Health	Agree and will propose rules
82-555	Admin. Proc.-Federal Rules	Department of Mines and Minerals	No Response
82-562	Compensation-Property	Department of Public Aid	No Response
82-567	Tax Appeal Board	Department of Revenue	No Response
82-568	Community Living Facility License Board of Natural resources Decisions	Department of Public Health Department of Energy and Natural Resources	Agree and will propose rules Do not believe rules are necessary
82-572	EPA-Hazardous Waste Sites	Environmental Protection Agency	No Response
82-573	Vehicle Code-Towable Forklifts	Pollution Control Board	Do not believe rules are necessary
82-582	Surveyors in training	Office of the Secretary of State Department of Registration and Education	Do not believe rules are necessary Agree and will propose rules
82-583	Public Utilities-Buy Property	Illinois Commerce Commission	No Response
82-584	Community Residential Alternatives	Department of Mental Health and Developmental Disabilities	No Response
82-585	Teacher Aides Requirements	Department of Public Health	Do not believe rules are necessary
82-589	School Code-ISSC Loan In Bankruptcy	State Board of Education Illinois State Scholarship Commission	No Response No Response
82-592	Amends Natural Resources Act	Department of Energy and Natural Resources	Do not believe rules are necessary

82-593	Correctional Industry-Cigarette Tax	Department of Revenue	No Response
82-596	Pension-Benefits to age 70	State Employee's Retirement System	No Response
82-600	Electronic Fund Transfer-Amend	Office of the Commissioner of Banks and Trust Companies	No Response
82-606	Dram Shops-Distributor Sales	Illinois Liquor Control Commission	No Response
82-609	Income Tax-Charity Filings	Department of Revenue	No Response
82-614	Personnel Code-Vet. Preference	Department of Personnel	No Response
82-616	Vehicle Relocators-Penalties	Illinois Commerce Commission	No Response
82-624	Veterinary Practices-Licensing	Department of Registration and Education	Agree and have proposed rules
82-626	Insurance Code-Adopted Children	Department of Insurance	No Response
82-628	Vehicle Code-Driver's Exams	Office of the Secretary of State	Agree and will propose rules
82-629	Snowmobile-Prohibit Hunting	Department of Conservation	No Response
82-630	School Psychological Services	Department of Registration and Education	Do not believe rules are necessary
82-631	Insurance Dividends-Premiums	State Board of Education	No Response
82-633	Medical Practice-Exam Committee	Department of Insurance	No Response
		Department of Registration and Education	Do not believe rules are necessary
82-634	Law Enforcement-Arrest Records	Department of Public Health	Agree and will propose rules
82-635	County Audit-Comptroller Order	Department of Law Enforcement	Do not believe rules are necessary
82-638	School Code-Changes Terminology	Office of the Comptroller	Do not believe rules are necessary
82-645	Public Aid-Domestic Violence	State Board of Education	No Response
82-652	Corrections-Commissary Audit	Department of Public Aid	No Response
82-664	Public Aid-Parent Locator Service	Department of Corrections	Agree and will propose rules
82-665	Sales Tax-Exempt Rolling Stock	Department of Public Aid	No Response
82-666	Mortgages-Variable Interest	Department of Revenue	No Response
82-667	Contract Interest rate-9%	Department of Financial Institutions	No Response
82-672	Sales Tax-Dissolved Corp.	Institutions	No Response
82-674	Law Enforcement Officer Training	Department of Revenue	Agree and will propose rules
		Illinois Local Government Law Enforcement Officers Training Board	
82-676	Taiwan-Illinois Office	Office of the Secretary of State	No Response
82-678	EPA-Burn Landscape Waste	Pollution Control Board	Do not believe rules are necessary
82-679	Armed Force-Reserves Benefits	Department of Personnel	No Response

82-683	Sales Tax-Distillation Equip.	Department of Revenue	No Response	
82-695	Vehicle Code-Sell without I.D.Numbers	Illinois Commerce Commission	Agree and will propose rules	
		Office of the Secretary of State	No Response	
		Department of Public Health	Do not believe rules are necessary	
82-696	Hypothyroidism test	Department of Revenue	No Response	
82-697	Gasohol-10% Anhydrous Alcohol	State Employee's Retirement System	Do not believe rules are necessary	
82-699	Pension Code-Teacher Health Insur.	Department of Agriculture	Do not believe rules are necessary	
82-700	Bovine TB Compensation	Department of Agriculture	Do not believe rules are necessary	
82-701	Bull Lease-License-Brucellosis	Department of Agriculture	No Response	
82-702	Civil Admin. Code Ag.Dept-Gasohol	Department of Revenue	No Response	
82-703	Auto Rent Occup. & Use Tax	Department of Corrections	Do not believe rules are necessary	
82-705	Corrections-Force in Prison Riot	Office of the State Fire Marshal	No Response	
82-706	Fire Marshal-Invalid Rescue	Department of Human Rights	Agree and have proposed rules	
82-709	Human Rights-National Origin	Human Rights Commission	No Response	
82-712	DCFS Child Abuse Center	Department of Children and Family Services	Do not believe rules are necessary	
82-717	Prisoner-Reimburse Govt.	Department of Corrections	Agree and will propose rules	
82-720	School Code Special Ed. Services	State Board of Education	No Response	
82-721	Insurance-Safe Driver Course	Department of Insurance	No Response	
82-722	Bees-Diseases & Parasites	Department of Agriculture	Agree and have proposed rules	
82-724	School Code-Title I Education Plan	State Board of Education	No Response	
82-725	Pest Control-Eliminate Council	Department of Public Health	Agree and will propose rules	
82-726	DCFS-Case Tracking System	Department of Children and Family Services	Do not believe rules are necessary	
82-727	Department of Revenue Sunshine Act	Department of Revenue	No Response	
82-728	State Comptroller-\$2500 Contracts	Office of the Comptroller	No Response	
82-729	State Police-Discipline Rights	Law Enforcement Merit Board	Do not believe rules are necessary	
82-732	Pharmacy-Generic Drug Substitute	Department of Registration and Education	Agree and will propose rules	
82-735	Pension Code-Assign Compensation Claims	Illinois Industrial Commission	Do not believe rules are necessary	
		State Employee's Retirement System	No Response	

BUSINESS REGULATION STUDY

One of the tasks undertaken by the Joint Committee during 1981 was the commencement of a business-regulation study project. The project utilizes the combined efforts of the Joint Committee, the Illinois Commission on Intergovernmental Cooperation, and the Department of Commerce and Community Affairs. It will attempt to catalog, classify and study state government regulatory efforts affecting business in the state.

Businesses often encounter problems trying to comply with the regulations of various state agencies and they often voice complaints about the high costs of complying with those regulations. The business regulation project will help improve the somewhat strained relationship between businesses and state government by providing useful information about the origins, objectives, costs and other factors related to the regulations. Information about the regulations affecting business will be obtained by utilizing the data compiled by the Joint Committee during its review of agency rules and through a special survey of various state agencies.

The project is being directed by a steering committee of business representatives, academics, and national and state political figures. The Committee members provide technical assistance and advise the project staff on possible directions and goals. In addition, the broad composition of the committee helps provide support for the project. The steering committee members include:

James Beaumont
Illinois State Chamber of Commerce

Richard K. Berg
Administrative Conference of the United States

Senator Prescott E. Bloom (R.-Peoria)

John W. Castle
Department of Commerce and Community Affairs

Michael A. Donahue
National Federation of Independent Businesses

David Doty
Interlake, Inc.

U. S. Senator Alan J. Dixon (D.-Illinois)

Walter J. Kendall III
John Marshall Law School

U. S. Senator Charles H. Percy (R.-Illinois)

David P. Ransburg
L. R. Nelson Corporation

Lee Rathbun
Arthur Young & Company

Representative Jim Reilly (R.-Jacksonville)

The project is being conducted in two phases. Phase I will include the development and publication of a user-oriented catalog of regulations affecting business. The catalog will contain useful information relating to specific regulations, discussing the types of businesses affected, the compliance and reporting requirements, and the state agency contact for further information regarding the regulation as well as other useful information. The catalog should serve as a valuable source of information for both new and existing businesses throughout the state.

In addition to the catalog, Phase I will also include the development of a data base of information to be used for further and more comprehensive analysis of regulatory efforts. The initial findings and recommendations of the project will be included in a report to the General Assembly. A business seminar will be conducted to summarize and disseminate these findings and recommendations.

Phase II of the project will include further research and development of the catalog, as well as project support papers and analysis.

The project should produce a number of benefits. New and existing businesses will have an accessible and user-oriented source of regulatory information, and the degree of cooperation between businesses and state government should improve as well. The project should also help increase the public awareness of the effects of regulations.

COURT DECISIONS AND ATTORNEY GENERAL OPINIONS

The summer of 1981 saw what might be the most important development to date in terms of judicial construction and application of the rulemaking provisions of the Administrative Procedure Act. On July 16, the Sangamon County Circuit Court entered a judgment order in Mobil Oil Corp. v. Johnson (No. 422-79). (See pages 286-289). The case concerns the assessment of some \$8 million under the Use Tax Act (Ill. Rev. Stat., ch. 120, par. 439.1 through 439.22) for Mobil's use of process gas, catalytic coke, and heavy fuel oil. The court found that the policy of imposing a use tax on these fuels (collectively called "refinery fuels") and the method used for calculating the tax were "rules" within the definition of that term in Section 3.09 of the Administrative Procedure Act. The court further found the assessment of the use tax on refinery fuels to be void because the Act's rulemaking procedures were not followed when the Department of Revenue adopted this method of assessing the tax.

The Attorney General, representing the Department of Revenue and the State Treasurer, made a motion to the Illinois Supreme Court to allow direct appeal pursuant to Supreme Court Rule 302(b). That motion was granted on August 13, 1981, and briefs of the respective parties are due to be filed in early 1982. A decision by the Supreme Court in this case could have a significant impact on agency rulemaking by broadening (or possibly narrowing) the range of materials included in the term "rule". The interpretation of this important definition has not previously been addressed by the Illinois Supreme Court.

Two cases came down in the past year in which appellate courts held that the State Board of Education's rules establishing requirements and procedures for the elimination and prevention of racial segregation in schools exceed the State Board's statutory authority and are therefore invalid. These cases are Aurora East Public School District No. 131, Kane County v. Cronin, 92 Ill. App. 3d 1010, 415 N.E.2d 1372, 48 Ill.Dec. 88 (Second District, 1981), and Chicago Heights Public School District 170 v. Illinois State Board of Education, 97 Ill.App. 3d 246, 422 N.E.2d

898, 52 Ill.Dec. 689 (First District, 1981). In each of these cases, the local school district brought suit to have the rules declared invalid; the facts of each case were not disputed and thus not recited at length in the opinions. The rules in question were adopted in 1971, and amended in 1976 and 1977. Their purpose is the administration and enforcement of the Armstrong Act, which provides that: ". . . as soon as practicable, and from time to time thereafter, the [local school] board shall change or revise existing units or create new units in a manner which will take into consideration the prevention of segregation and the elimination of separation of children in public schools because of color, race or nationality." (Ill. Rev. Stat., ch. 122, par. 10-21.3).

Two aspects of the rules were found to be particularly troublesome by the reviewing courts. The first of these concerns a requirement in the rules that school districts keep the percentage of minority students at each of its schools within plus or minus 15% of the percentage of minority students in the district. For example, in a school district with a 23% minority population, no school could have less than 8% or more than 38% minority students. Both appellate courts found that in setting forth the 15% formula, the State Board exceeded its statutory authority. The second provision which concerned both courts was the State Board's sanction for non-compliance with the rules. The rules stated that the Board would not accept or transfer federal funds for the benefit of school districts held not to be in compliance. This provision was also held to exceed statutory authority. Dissenting opinions were filed in each of these cases by justices who felt that the State Board had the requisite statutory authority. After granting leave to appeal both of these cases, the Supreme Court consolidated them on October 19, 1981, and could hear oral argument as early as March 1982.

The Illinois Supreme Court in Caterpillar Tractor Co. v. Lenckos, 84 Ill. 2d 102, 417 N.E.2d 1343, 49 Ill. Dec. 329 (1981), held that the Director of the Department of Revenue was authorized in certain situations to use unitary apportionment or a combined method of reporting business income for state income tax purposes. The case arose when Caterpillar Tractor Company and four of its corporate subsidiaries filed claims for refunds on the basis that a unitary apportionment should have been applied. Because it was not applied each of them

paid a greater tax than it was liable for. Based on the court's decision, the Department of Revenue promulgated emergency and proposed rules establishing entirely different requirements for companies doing business in Illinois. The effect of these rules was to bring the income of worldwide companies into consideration of the Illinois Department for determination of Illinois income tax.

In Owens-Illinois, Inc. v. Bowling, 99 Ill.App. 3d 1117, 425 N.E.2d 1288, 55 Ill.Dec. 115 (First District, 1981), the court invalidated Department of Labor Regulation 14, holding that the regulation conflicted with Section 702 of the Unemployment Insurance Act (Ill. Rev. Stat., ch. 48, par. 452). The lawsuit arose when some 2,800 non-striking Owens-Illinois employees refused to cross the picket lines of their co-workers, whose union had called a strike. The non-striking employees then filed for unemployment insurance benefits. The Director of the Department of Labor held that the claimants were "not ineligible for unemployment benefits during the strike" even though Owens-Illinois objected that the Department had failed to make a determination as to whether each claimant was "able to work," "available for work," and "actively seeking work" during the time in question (Ill. Rev. Stat., ch. 48, par. 420C).

The reason given by the Department for not considering these issues, or at least not considering them in the manner Owens-Illinois would have preferred, was that employers were required by Regulation 14 to submit notices to their employees of their intent to contest eligibility. The regulation provides that failure to submit these notices deprives employers of the right to contest the benefits their employees claim.

The Cook County Circuit Court upheld the regulation and the holding of the Department which was based on it, but the First District Appellate Court reversed. The appellate court held that Section 702 of the Unemployment Insurance Act requires a specific weekly determination as to eligibility on the part of the Department, and further requires a Department ruling whenever the employer challenges an employee's right to benefits. As the court puts it, "[a]lthough the Director can prescribe the manner of challenging eligibility, his authority to do so is not so broad as to wholly relieve the Department of that

function." The Court thus voided Regulation 14, repeating the rule of law that "[i]n case of a conflict between a statute and regulation, the statute governs and the regulation is invalid."

A portion of the Illinois Liquor Control Commission's Rule 24 met a similar fate in Walgreen Co. v. Illinois Liquor Control Commission, 101 Ill.App. 3d 216, 427 N.E.2d 1307, 56 Ill.Dec.761(Third District, 1981). In that case Walgreen's, which had advertised liquor along with nonalcoholic products in advertisements which displayed VISA and Master Charge symbols, was fined \$20,000 by the Commission for having committed 208 violations of Rule 24, which prohibited such advertisements. Walgreen's appealed the Commission's order to the Kankakee County Circuit Court, where the judge found Rule 24 invalid because it violated the drug store's First Amendment rights (and on three other grounds). The appellate court affirmed on the constitutional grounds, holding that the state may limit First Amendment rights where important governmental goals are involved and where the methods chosen are "closely drawn," but that the Rule 24 restriction was not "a closely drawn means of promoting temperance or protecting the public health, safety or welfare." The lower court's order was modified so as not to invalidate Rule 24 in its entirety; the Appellate Court held that the rule's first two paragraphs were severable from the third, allowing those two to stand despite the invalidity of the third.

The rules and regulations for public contracts prescribed by the Illinois Fair Employment Practices Commission fared better when subjected to judicial scrutiny in 1981. In Eastman Kodak Company v. Fair Employment Practices Commission, 86 Ill. 2d 60, 426 N.E.2d 877, 55 Ill.Dec. 552 (1981), the Supreme Court affirmed a decision of the Second District Appellate Court which held the rules valid. In 1975, the Commission issued an order in which it found that Kodak's affirmative action plan for its Oakbrook facility did not comply with the Commission's rules. As a result, Kodak's name was taken off the list of eligible bidders for public contracts with the State of Illinois.

The company appealed to the DuPage County Circuit Court under the Administrative Review Act. That court reversed the decision of the Commission,

but the Second District Appellate Court in turn reversed the lower court and affirmed the Commission order. Kodak was then granted leave to appeal by the Illinois Supreme Court. Before that court, Kodak contended that the affirmative action rules should be voided as "exceeding statutory authority and because they conflicted with Title VII of the Civil Rights Act of 1964 (42 U.S.C. sec. 2000e et seq.) by requiring "impermissible preferential hiring." The Supreme Court held that statutory language requiring parties to public contract to "take affirmative action to insure that no unfair employment practice is committed" and allowing the Commission to "issue rules and regulations . . . for the purpose of enforcement and administration of" this provision supplied the requisite statutory authority. The court also held that the rules were not violative of federal law; it thus affirmed the decision of the appellate court and of the Commission.

Department of Corrections Administrative Regulation 804 also withstood a court battle in People ex rel. Stringer v. Rowe, 91 Ill.App. 3d 134, 414 N.E.2d 466, 46 Ill.Dec. 582 (Third District, 1981). In April 1978, the Department charged a Stateville inmate twice within a three-day period for possession of a weapon. Two separate hearings were held, as a result of which Stringer's security status was downgraded and he lost eighteen months of statutory good time. Stringer filed a pro se petition for declaratory judgement on grounds that never became entirely clear, even though the Will County Circuit Court subsequently appointed counsel for him and counsel filed an amended petition. The trial court denied the amended petition in 1979.

The appellate court found that the chief issues on appeal were whether the regulation satisfies due process requirements and whether the written statement of charges was sufficient, both constitutionally and by the terms of the regulation. Measuring Administrative Regulation 804 against the constitutional standards set forth by the U. S. Supreme Court in Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.ed.2d 935 (1974), the court found that the regulation provided for advance notice of charges, a written statement of facts the Department relied upon in making its finding, and an opportunity for prisoners to present evidence before being deprived of good time. Therefore, the court held that the regulation afforded due process. The court also found the written statement of charges to

be sufficient, and thus affirmed the decision of the circuit court.

In Chicago Division of Horsemen's Benevolent and Protective Association v. Illinois Racing Board (81 L 3268, Circuit Court of Cook County) a temporary restraining order (see pages 292-294) was issued restraining the Illinois Racing Board from enforcing its medication rules concerning lasix and phenylbutazone. The Racing Board, after conducting extensive research, had decided to upgrade its rules on medication for the Illinois horse racing industry and rules were proposed that would have banned the use of lasix and phenylbutazone. The rules were promulgated initially as emergency rules and were followed by proposed rules. There has been no final disposition of this case. The judge may take new testimony in the matter in January 1982.

The Circuit Court of Sangamon County stayed until further notice the Department of Registration and Education's decision that certain Caribbean medical schools were "not reputable and not in good standing" in St. George's University School of Medicine, et al. v. Department of Registration and Education (82-L-55, 7th Judicial Circuit of Sangamon County). In a July 24, 1981, decision (see pages 290-291), the Circuit Court found that Rule 1, in effect during the pendency of the administrative hearings, was an unconstitutional delegation of administrative authority; that the Department deprived the school of due process; that its findings were against the manifest weight of the evidence; and that the schools were reputable and in good standing. It remanded the issue to the Department for new action consistent with the decision. The order was appealed and argued on December 2, 1981, but no decision has yet been issued.

The Department of Revenue has also proposed rules in response to the Illinois Supreme Court's decision in O'Leary v. Allphin, 65 Ill.2d 268, 357 N.E.2d 491 (1976). The Department has proposed amendments to Article 17 of the Cigarette Tax Rules that prescribe the record keeping requirements for Illinois cigarette distributors selling unstamped cigarettes to out-of-state tobacco retailers.

There was only one official Attorney General's Opinion that involved rulemaking, Op. Atty. Gen. No. 81-003. The Director of the Department of

Revenue requested an opinion concerning procedures set forth in Article 14 of the Department's Administrative Rules and Regulations pertaining to the Retailers' Tax Act.

The Attorney General opined that the procedure was not valid due to the lack of adequate statutory support for the rules that assessed personal liability of a corporation officer or employee who willfully fails to file tax returns. The Department has proposed a repeal of the rule.

Other appellate court decisions have indirectly ruled on aspects of the rulemaking process. In Taylor v. Franzen, 93 Ill. App.3d 758, 417 N.E.2d 243 (1981), the Fifth District found that the Department of Corrections erred by not following its own rules and thus made its hearing to revoke good time credits inadequate. In Illinois Bell Telephone Company v. Allphin, 95 Ill.App.3d 115, 419 N.E.2d 1188 (1981), the First District concluded that once an administrative agency establishes rules and regulations implementing a statute, it is bound to adhere to them as long as they remain in effect. The Department of Revenue had taken the position that it may, to the absolute detriment of the taxpayer who relies on the Department's rules and regulations, totally ignore its own written rules and regulations and retroactively assess a tax that was not due at the tax period in question. This case has been appealed to the Illinois Supreme Court.

A decision was handed down in one of the circuit court cases that was discussed in the 1980 Annual Report. In Iowa-Illinois Gas and Electric Company v. Illinois Commerce Commission, 91 Ill.App.3d 96, 414 N.E.2d 287 (1980), the Third District held that the issues raised on appeal were moot because the emergency rules that had been filed by the ICC had expired and were no longer in force.

The Third District Appellate Court also handed down two decisions with the same name and the same holding which concerned the rulemaking process. These were Environmental Protection Agency v. Pollution Control Board, 100 Ill.App.3d 730, 426N.E.2d 1255, 55 Ill.Dec. 881 (1981), and Environmental Protection Agency v. Pollution Control Board, 100 Ill.App. 3d 735, 426 N.E.2d 1264, 55 Ill. Dec. 890

(1981). In each of these cases, the court held that the Environmental Protection Agency could not enforce Pollution Control Board Rule 204 through the Illinois courts until the rule had been amended to eliminate the grounds upon which the Illinois Supreme Court had invalidated it in 1976. The Agency had argued that the rule was enforceable because the U.S. Environmental Protection Agency had approved it as a part of the Illinois State Implementation Plan pursuant to 42 U.S.C. sec. 7410(a) and it thus had the force of federal law. Noting that federal courts had split on this issue, the appellate court was not persuaded by this argument. A similar decision was reached in Celotex Corp. v. Illinois Pollution Control Board, 100 Ill.App.3d 520 (1981).

SECTION TWO: STATISTICAL SUMMARY

This section contains a statistical summary of the rulemaking actions of Illinois agencies and objections issued by the Joint Committee during 1981. A number of the statistical tables compare 1981 data to the data collected in 1978, 1979 and 1980 to help reveal possible statistical trends in the rulemaking processes of Illinois agencies.

Table Nine contains the number of proposed, emergency and peremptory rulemakings by individual agency. The following agencies accounted for 45% of all general rulemaking in 1981: Departments of Conservation, Public Aid, Public Health and Revenue. In regard to emergency rulemaking, the Department of Conservation dominated with 18 rules. A standout in the peremptory rulemaking category with 31 rules, was the Department of Public Aid, accounting for 78% of the total.

A comparison of emergency and peremptory rules for the years 1980 and 1981 is presented in Table Eight. A goal of the Joint Committee is to provide public participation in rulemaking proceedings. An emergency rule is implemented by the agency without opportunity for public comment. In view of the latter, any decrease in total emergency rules is viewed by the Committee as a favorable trend. The total emergency rules promulgated for 1981 show a 52% reduction over 1980 data. The 1981 results would have shown a further reduction over 1980 if not for the Department of Conservation's 13 emergency rules. A substantial decrease for 1981 is shown by the Departments of Public Health and Revenue. The peremptory rules for 1981 showed a 52% increase over 1980. However, the Department of Public Aid's peremptory rules were 77.5% of the 1981 total. The future trend is a decrease in peremptory rulemaking, especially in view of the federal block grants requiring less of state agencies. Moreover, without Department of Public Aid rules, total peremptory rules for 1981 would be 10, or in the alternative; 54% reduction over 1980 totals.

Table Seven presents a comparison of general rulemaking by agency during 1978, 1979, 1980 and 1981. In general, the data indicates a gradual increase in general rulemaking over the few years. The total number of rulemaking decreased from 1978 to 1979. A substantial increase is evident in 1980, with an additional 93 rules promulgated. In 1981, an increase occurred, with 72 more rules promulgated than in 1980.

An aggregate display of statements of objection per agency are presented in Table Ten. The Illinois Industrial Commission had the highest total statement of objections (8), with 7 being peremptory rules. The next highest was the Attorney General with a total of 6, all being existing rules. The five-year review is currently reviewing existing rules in the areas of labor law and consumer protection. Thus, the majority of existing rule objections are confined to the Department of Labor, Attorney General and Office of Consumer Services.

The overview should provide some general indications of the extent of the Joint Committee's effort to improve and monitor the rulemaking process, and the impact of the Committee on agency rulemaking in Illinois. The specific substantive issues which are indicated in the actual statements of objection in the next section of this report should balance the statistical presentation in this section.

TABLE SEVEN:
COMPARISON OF GENERAL RULEMAKINGS BY AGENCY FOR 1978 THROUGH 1981

<u>General Rulemakings</u>				
<u>Agency</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
<u>Code Departments</u>				
Administrative Services	1		7	7
Aging	5	1	6	10
Agriculture	14	17	14	18
Children & Family Services	2	2	60	11
Conservation	76	92	75	105
Corrections	82	23	38	14
Financial Institutions	1	10	8	12
Human Rights				5
Insurance	15	14	17	13
Labor	5	6	3	7
Law Enforcement	2		1	
Local Government Affairs	1		3	
Mental Health and Developmental Disabilities	8	13	4	8
Mines and Minerals	4		5	5
Nuclear Safety			1	2
Personnel	10	9	9	18
Public Aid	46	56	47	92
Public Health	42	43	55	44
Registration & Education	11	11	22	39
Rehabilitation Services			3	1
Revenue	11	16	24	46
Transportation	13	13	13	15
Veterans' Affairs	1	2	2	2
<u>Constitutional Offices</u>				
Attorney General	3	1	2	
Auditor General	7	5	2	1
Comptroller	1	2	4	2
Governor				
Secretary of State	15	21	12	24
Treasurer	1	1		
<u>Legislative Agencies</u>				
Intergovernmental Cooperation Commission				
Joint Committee on Administrative Rules	3	5	1	
Legislative Audit Commission				

General Rulemakings

<u>Legislative Agencies</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
Legislative Information System	1		2	
Legislative Investigating Commission				
Legislative Reference Bureau				
Legislative Space Needs Commission				
Legislative Travel Control Board	1	1		
Select Joint Committee on Regulatory Agency Reform				1
<u>Other Agencies</u>				
Abandoned Mined Lands Reclamation Council				
Aggregate Mining Problems Study Commission				2
Banks & Trust Companies Commission of	2	5	3	1
Capital Development Board	2	1	3	
Cities & Village Municipal Problems Commission Illinois				1
Civil Service Commission				2
Commerce Commission				13
Commerce & Community Affairs, Department of				1
Community College Board	17	11	19	
County Problems Study Commission				1
Criminal Justice Information Council	1	2		
Dangerous Drugs Commission				4
Education, State Board of	3	4	9	8
Education Facilities Authority			1	
Elections, State Board of	6	1	8	4
Emergency Services and Disaster Agency				2
Energy Resource Commission				1
Environmental Protection Agency	7	12	10	13
Fair Employment Practices Commission	2	3		

General Rulemakings

<u>Other Agencies</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
Fire Marshal	1	2	1	1
Governor's Purchased Care Review Board	1	6	2	3
Guardianship & Advocacy Commission			2	
Health Facilities Authority	5	2		1
Health Facilities Planning Board		1		
Health Finance Authority		1	5	5
Higher Education, Board of		3	2	5
Higher Education Travel Control Board		1	1	1
Housing Development Authority			1	2
Human Rights Commission				1
Industrial Commission	4	1	3	2
Investment, State Board of		3	1	
Law Enforcement Commission				10
Law Enforcement Merit Board	2	2	1	
Legislative Commission to Visit & Examine State Institutions				1
Legislative Travel Control Board				1
Local Records Commission		1		
Lottery Control Board		2		
Medical Center Commission		1		
Mississippi River Parkway Commission				1
Natural Resources, Institute of		1	1	
Nutrition, State Council on				1
Pollution Control Board	18	11	18	14
Racing Board	10	14	19	20
Regents, Board of				2
Savings & Loan Commission, Illinois State	3	4	1	9
Scholarship Commission, Illinois State				9
State Employees' Retirement System	2	3	5	13
State Fair Agency		4		
State Universities Civil Service System				2
Statewide Health Coordinating Council	4	1		2

General Rulemakings

<u>Miscellaneous Agencies</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
Trustees, Board of (University of Illinois)				1
TOTALS	507	475	568	639

TABLE EIGHT:
COMPARISON OF EMERGENCY AND PEREMPTORY RULEMAKING
BY AGENCY FOR 1980 AND 1981

<u>Agency</u>	<u>Emergency</u>		<u>Peremptory</u>	
	<u>1980</u>	<u>1981</u>	<u>1980</u>	<u>1981</u>
<u>Code Departments</u>				
Aging	1	1		
Agriculture	2			
Children & Family Service	2			1
Conservation	13	13	13	
Corrections	4	2		1
Financial Institutions	2	2		
Human Rights	1			
Insurance	4	2		
Labor	1	3		
Mental Health & Developmental Disabilities		1		
Mines & Minerals	1	1		
Personnel	4	3		
Public Aid	4	3	5	31
Public Health	11	1		
Registration & Education	2	1		
Revenue	9	1		
Transportation	2	1		
<u>Constitutional Offices</u>				
Comptroller	1			
Secretary of State				
<u>Legislative Agencies</u>				
Legislative Information System	1			
<u>Other Agencies</u>				
Banks & Trust Companies, Commission of	3			
Capital Development Board	2			
Commerce Commission	5			
Dangerous Drugs Commission	1			
Education, State Board of	3	1	7	
Elections, State Board of	4	1		
Employee's Retirement System, State		1		
Environmental Protection Agency	3	2		
Fire Marshal	1			
Governor's Office of Manpower & Human Development				

	<u>Emergency</u>		<u>Peremptory</u>	
	<u>1980</u>	<u>1981</u>	<u>1980</u>	<u>1981</u>
Governor's Purchased Care Review Board	1			
Industrial Commission	1	2		
Law Enforcement Merit Board	1			
Natural Resources, Institute of				
Pollution Control Board	1	3	4	8
Racing Board	2			
Savings & Loan Commissioner	1	1		
State Employee's Retirement System	3			
Criminal Justice Information Board				
Higher Education, Board of		1		
Investment, State Board of				
Medical Center Commission				
Gusrdianship & Advocacy Commission				
Fair Employment Practices Commission				
Scholarship Commission, Illinois State		1		
Statewide Health Coordinating Council		1		
Trustees, Board of (University of Illinois)		1		
TOTALS	97	51	17	41

TABLE NINE: RULEMAKINGS BY AGENCY FOR 1981

<u>Code Department</u>	<u>General</u>	<u>Emergency</u>	<u>Peremptory</u>
Administrative Services	7		
Aging	10	1	
Agriculture	18		
Children & Family Services	1		1
Conservation	105	13	
Corrections	14	2	1
Financial Institutions	12	2	
Human Rights	5		
Insurance	13	2	
Labor	7	3	
Mental Health & Developmental Disabilities	8	1	
Mines and Minerals	5	1	
Nuclear Safety	2		
Personnel	18	3	
Public Aid	92	3	31
Public Health	44	1	
Registration and Education	39	1	
Rehabilitation Services	1		
Revenue	47	1	
Transportation	16	1	
Veterans' Affairs	2		
<u>Constitutional Offices</u>			
Auditor General	1		
Comptroller	3		
Secretary of State	22	1	
<u>Legislative Agencies</u>			
Joint Committee on Administrative Rules	1		
Select Joint Committee on Regulatory Agency Reform	2		
<u>Other Agencies</u>			
Abandoned Mined Lands Reclamation Council	2		
Aggregate Mining Problems Study Commission	1		
Cities and Village			

	<u>General</u>	<u>Emergency</u>	<u>Peremptory</u>
Municipal Problems			
Commission, Illinois	1		
Civil Service Commission	2		
Commerce Commission	13		
Commerce and Community			
Affairs, Department of	1		
County Problems Study			
Commission	1		
Dangerous Drugs Commission	4		
Education, State Board of		1	
Elections, State Board of	4	1	
Emergency Services and			
Disaster Agency	2		
Energy Resource Commission	1		
Environmental Protection			
Agency	13	2	
Fire Marshal	1		
Governor's Purchased Care			
Review Board	3		
Health Facilities			
Authority, Illinois	1		
Health Finance Authority	5		
Higher Education, Board of	5	1	
Higher Education Travel			
Control Board	1		
Human Rights Commission	1		
Industrial Commission	2	2	
Law Enforcement Commission	2		
Legislative Commission			
to Visit, Examine State			
Institutions	1		
Legislative Travel			
Control Board	1		
Mississippi River Parkway			
Commission	1		
Nutrition, State Council on	1		
Pollution Control Board	13	3	8
Racing Board	18		
Regents, Board of	2		
Savings and Loan Commission	9	1	
Scholarship Commission,			
Illinois State	9	1	
State Employees'			
Retirement System	13		
State Universities Civil			
Service System	2		

	<u>General</u>	<u>Emergency</u>	<u>Peremptory</u>
Statewide Health Coordinating Council	2	1	
Trustees, Board of [University of Illinois]	1	1	
TOTALS	639	51	41

TABLE TEN: STATEMENTS OF OBJECTION
ISSUED DURING 1981 BY AGENCY

<u>Agency</u>	<u>Total Statements of Objection</u>	<u>General Rulemakings Objected to</u>	<u>Emergency Rulemakings Objected to</u>	<u>Peremptory Rulemakings Objected to</u>	<u>Existing Rules Objected to</u>
<u>Code Departments</u>					
Aging	1	1			
Children & Family Services	4	4			
Conservation	3	2	1		
Corrections	1	1			
Human Rights	1				1
Insurance	1	1			
Labor	5				5
Mental Health & Developmental Disabilities	1		1		
Mines and Minerals	1	1			
Public Aid	3	3			
Public Health	1	1			
Registration & Education	2	2			
Rehabilitation Services	1	1			
Revenue	3	3			
<u>Constitutional Offices</u>					
Attorney General	6				6
Secretary of State	1	1			
<u>Other Agencies</u>					
Abandoned Mined Lands Reclamation Council	1	1			
Environmental Protection Agency	2	2			
Illinois Health Finance Authority	3	3			
Illinois Industrial Commission	8	1			7
Law Enforcement Merit Board	1	1			
Offices of Consumer Services	5				5
State Board of Education	5	1			4
State Board of Higher Education	1		1		
Statewide Health Coordinating Council	1		1		
TOTAL	62	30	4	0	28

TABLE ELEVEN: NATURE OF RESPONSES TO OBJECTIONS BY AGENCY

<u>Code Departments</u>	<u>Refuse</u>	<u>Modify or Amend</u>	<u>Withdraw or Repeal</u>	<u>Pending</u>
Aging				1
Children and Family Services		4		
Conservation		2	1	
Corrections		1		
Human Rights		1		
Insurance		1		
Labor	1	4		
Mental Health and Developmental Disabilities				1
Mines and Minerals	1			
Public Aid	1	1	1	
Public Health	1			
Registration and Education	2			
Rehabilitation Services		1		
Revenue		3		
<u>Constitutional Offices</u>				
Attorney General	6			
Secretary of State			1	
<u>Other Agencies</u>				
Abandoned Mined Lands Reclamation Council	1			
Environmental Protection Agency	1	1		
Illinois Health Finance Authority		3		
Illinois Industrial Commission	5	2		
Law Enforcement Merit Board		1		
Office of Consumer Services		1	5	
State Board of Education		1		4
State Board of Higher Education	1			
Statewide Health Coordinating Council	1			
TOTAL	21	27	8	6

TABLE TWELVE: COMPARISON OF AGENCY RESPONSES
TO OBJECTIONS (1978 TO 1981)

	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
NUMBER OF OBJECTIONS ISSUED	72	65	55	62
AGENCY RESPONSES:				
Withdrawn or Repealed	14 (19.4%)	2 (3.0%)	5 (9.1%)	8 (12.9%)
Modified or Amended	34 (47.2%)	30 (46.2%)	24 (43.6%)	27 (43.5%)
Refusal	24 (33.3%)	33 (50.8%)	26 (47.3%)	21 (33.9%)
Pending	0	0	0	6 (9.7%)

SECTION THREE
SPECIFIC OBJECTIONS AND RECOMMENDATIONS ISSUED

This section contains a comprehensive listing of each of the specific statements of objection and statements of recommendation issued by the Joint Committee during 1981. Over sixty statements of objection in this listing along with over sixty statements of recommendation.

This listing is arranged by agency in the same order as Table xx (page xx). Arranging the objections and recommendations in this order facilitates the location of specific issues of interest to anyone using this report.

STATEMENTS OF OBJECTION

Code Departments

Department on Aging

Regulation 2.6(e), "Code of Conduct"

Initial Publication in Illinois Register: June 26, 1981

Date Second Notice Received: August 20, 1981

Joint Committee Objection: September 23, 1981

Specific Objections:

Proposed Rule 2.6(e), Code of Conduct, establishes standards for procurement in order to assure that small and minority business and women's business enterprises are utilized when possible. In addition, this proposed rulemaking describes what constitutes a conflict of interest for officers and employees of the Department.

The Joint Committee objects to this proposed rulemaking because the Department has exceeded its statutory authority and is being unreasonable and arbitrary in its treatment of possible conflicts of interest. The Illinois Purchasing Act, Ch. 127, Section 132.11.(2) states, in part, "this section does not apply to...a contract for personal services of a wholly ministerial character including but not limited to services as a laborer, clerk, typist, stenographer, page, bookkeeper, receptionist or telephone switchboard operator..." Rule 2.6(e) state that any employment could be a conflict of interest and would be prohibited. The Department has exceeded its statutory authority by including that group of individuals who would be excluded by Section 132.11.1(2) of the Purchasing Act.

Date Agency Response Received: Pending

Department of Children and Family Services

Regulation 379, "Dual Jurisdiction"

Initial Publication in Illinois Register: August 15, 1980

Date Second Notice Received: December 9, 1980

Joint Committee Objection: January 22, 1981

Specific Objections:

The proposed rules establish when, and to what extent, the Department will cooperate with local government units enacting ordinances pertaining to licensing and regulation of child care facilities.

It states that when there is dual jurisdiction the Department's regulatory and licensing powers take precedence over any local powers.

The Joint Committee objects to this proposed rule because the Department of Children and Family Services lacks authority to propose a rule that limits the power of home rule units. The Joint Committee objects to this rule based on authority granted to it in Section 7.06(a) of the Illinois Administrative Procedure Act.

Date Agency Response Received: March 23, 1981

Nature of Agency Response: Modify

Publication as Adopted in Illinois Register: June 5, 1981

Effective Date: June 5, 1981

Regulation 437, Employee Conflict of Interest"

Initial Publication in Illinois Register: November 21, 1980

Date Second Notice Received: April 10, 1981

Joint Committee Objection: May 13, 1981

Specific Objections:

The proposed rule 437 describes what constitutes conflict of interest for employees of the Department and prohibits certain economic and/or collateral employee interests which may influence Departmental activities.

The Joint Committee objects to Section 437.4, first subsection, and Section 437.5, first and fourth subsections, of this proposed rulemaking because they are in excess of the statutory authority granted to the Department.

Date Agency Response Received: August 13, 1981

Nature of Agency Response: Modify

Publication as Adopted in Illinois Register: November 30, 1981

Effective Date: November 30, 1981

Regulation 382, "Agencies Exempt from Licensing"

Initial Publication in Illinois Register: October 31, 1980

Date Second Notice Received: July 6, 1981

Joint Committee Objection: August 19, 1981

Specific Objections:

Proposed Rule 382 defines those agencies which are exempt from licensing and describes the process used by DCFS to license family homes supervised by same. The rule explains that the Department shall enter into joint agreements with agencies, which are exempt from licensing, provided they meet the standards for licensure as a child welfare agency in Illinois. In addition, the rule defines Departmental and agency responsibilities with regard to the joint agreements.

The Joint Committee objects to Section 382.3.c of this proposed rulemaking because it is in excess of the statutory authority granted to the agency by the Child Care Act, Ch. 23, Sec. 2226.e.

Date Agency Response Received: September 14, 1981

Nature of Agency Response: Modify

Publication as Adopted in Illinois Register: December 28, 1981

Effective Date: December 28, 1981

Regulation 357, "Purchase of Service"

Initial Publication in Illinois Register: November 21, 1980

Date Second Notice Received: May 19, 1981

Joint Committee Objection: June 16, 1981

Specific Objections:

Proposed Rule 357 describes the requirements to be met by purchase of service providers who are under contract to the Department to provide service(s) for its clients. Included are the request for proposal and contract award and termination procedures as well as the programmatic and fiscal recordkeeping and reporting requirements.

The Joint Committee objects to Section 357.7.e of this proposed rule because it does not provide the standards by which the Department shall exercise its discretionary power and is therefore not in compliance with Section 4.02 of the IAPA which states:

Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. Such standards shall be stated as precisely and clearly as practicable under the conditions, to inform fully those persons affected.

Date Agency Response Received: September 14, 1981

Nature of Agency Response: Modify

Publication as Adopted in Illinois Register: December 28, 1981

Effective Date: December 28, 1981

Department of Conservation

Article 163, "Access to the State Historic Preservation Officer's Archaeological Site Inventory File"

Initial Publication in Illinois Register: March 13, 1981

Date Second Notice Received: May 11, 1981

Joint Committee Objection: June 16, 1981

Specific Objections:

This proposed rulemaking is intended to limit access to the location information in the State Historic Preservation Officer's archaeological inventory file to those individuals with a legitimate need to know by establishing criteria to be employed in assessing requests for access.

The Joint Committee objects to this proposed rulemaking because the Department does not have statutory authority to restrict access to archaeological data.

Date Agency Response Received: July 3, 1981

Nature of Agency Response: Modify

Publication as Adopted in Illinois Register: August 28, 1981

Effective Date: August 14, 1981

The Joint Committee is recommending specific legislation to remedy this situation (see Recommended Bill Five, pages 196-198).

Article 164, "Minimum Professional Qualifications for Archaeologists"

Initial Publication in Illinois Register: March 13, 1981

Date Second Notice Received: May 11, 1981

Joint Committee Objection: June 16, 1981

Specific Objections:

This proposed rulemaking establishes minimum standards of education and experience for archaeologists practicing as consultants on federal undertakings that require State Historic Preservation Officer review and comments. This rulemaking is being promulgated pursuant to the federal standards for a professional archaeologist as set forth in 36 CFR Part 66.

The Joint Committee objects to this rulemaking because the Illinois Historic Preservation Act does not authorize the Department to adopt regulations which establish minimum professional qualifications for archaeologists. Also, the Department is attempting to adopt federal professional qualifications for archaeologists which were never adopted.

Date Agency Response Received: July 3, 1981

Nature of Agency Response: Withdrawn

Publication as Adopted in Illinois Register:

Effective Date:

The Joint Committee is recommending specific legislation to remedy this situation (see Recommended Bill Six, pages 199-200).

Article 73, "Amendment to Falconry and the Captive Propagation of Raptors"
[Emergency]

Publication in Illinois Register: September 11, 1981

Effective Date: September 1, 1981

Joint Committee Objection: October 21, 1981

Specific Objections:

This emergency rulemaking establishes general regulations and extends the hunting seasons for the harvesting of game species by hawks and falcons.

The Joint Committee objects to this emergency rulemaking because it is the second time it has been published as emergency rulemaking within a 24 month period in violation of Section 5.02 of the Illinois Administrative Procedure Act.

Date Agency Response Received: December 11, 1981

Nature of Agency Response: Modify

Department of Corrections

Adult Division Administrative Regulation #817-A-Day Release

Initial Publication in Illinois Register: February 6, 1981

Date Second Notice Received: March 20, 1981

Joint Committee Objections: April 13, 1981

Specific Objections:

This proposed rulemaking amends the Department's "Day Release" rule to allow inmates to participate in public work projects, attend an education institution and become involved in other treatment alternatives.

The Joint Committee objects to Sections II.H.4, II.E.(2), II.H.(6), and III.C.(1) of Proposed Adult Division A.R. 817-A because they lack adequate standards to govern the Department's exercise of power with regard, respectively, to the use of day release, the approval of individuals who will escort a resident, the imposition of sanctions for violating a rule established by the Department, and the approval of certain residents for EMT programs. Section 4.02 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1979, ch. 127, par. 1004.02, requires that any rule which implements a discretionary power of an agency "shall include the standards by which the agency shall exercise the power."

Date Agency Response Received: May 1, 1981

Nature of Agency Response: Modify

Publication as Adopted in Illinois Register: May 15, 1981

Effective Date: May 15, 1981

Department of Human Rights

Article III, Section 3.5(b), "Procedural and Public Contact" [Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1981

Specific Objections:

Section 3.5(b) permits a complainant to perfect a written charge filed with the Department where it lacks information needed to allow the Department to determine whether the facts alleged in the charge state a cause of action under the Human Rights Act. The relevant portion of the rule provides as follows:

If the individual fails or refuses to perfect the charges as specified, the charge may be dismissed pursuant to Section 4.5 of these Rules and Regulations.

Section 4.5 (formerly Section 4.6 of the Rules and Regulations of the Fair Employment Practices Commission) provides a procedure for notifying a complaint that his charge needs to be perfected and that failure to do so may result in dismissal of the charge.

The Department indicated that dismissal of a charge would be inappropriate or unreasonable in situations where the required information is not readily available to the complainant or where the complainant is unable to articulate the information adequately.

Since the Department is reserving the discretion not to dismiss an unperfected complaint, the rule should include the standards or criteria by which the discretionary power will be exercised, as required by Section 4.02 of the Illinois Administrative Procedure Act.

The Joint Committee objects to Section 3.5(b) because the Rule fails to include standards or criteria to be used by the department in determining whether to dismiss a charge.

Date Agency Response Received: November 17, 1981

Nature of Agency Response: Modify

Department of Insurance

Regulation 29.01 Worker's Compensation Self-Insurance

Initial Publication in Illinois Register: December 26, 1980

Date Second Notice Received: April 7, 1981

Joint Committee Objection: May 13, 1981

Specific Objections:

This proposed rulemaking is intended to provide standards and guidelines for the establishment and operation of Group Self-Insurance Pools. The rule also provides for the licensing and regulation of pool administrators and service companies to manage and assist in the pool's operations.

The Joint Committee objects to this proposed rule because the Department has exceeded the scope of its statutory authority provided in Ill. Rev. Stat. 1979, ch. 48, par. 138.4a by improperly designating categories of qualified employers as the definition of "similar risk characteristics."

Date Agency Response Received: May 15, 1981

Nature of Agency Response: Modify

Publication as Adopted in Illinois Register: June 12, 1981

Effective Date: May 27, 1981

Department of Labor

Regulation 14, Part B(4), "Illinois Unemployment Insurance Act" [Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1981

Specific Objections:

Regulation 14 implements that part of Section 702 of the Act which authorizes the Director to prescribe the time limits and the manner of filing for allegations of ineligibility, used in making a determinations or

reconsiderations thereof. Although Section 702 requires the claims adjudicator to consider information contained in an employing unit's allegation "whether or not the allegation is sufficient," it makes no provision for consideration of information filed late.

Regulation 14 B(4), however, states that the claims adjudicator "may" use such information filed late. Since the Department is not specifically instructed by the Act to consider, or not consider, late information, the decision to do so, or not do so, is discretionary. Regulation 14 B(4), however, contains no standards and criteria governing the exercise of this discretion. Section 4.02 of the Illinois Administrative Procedure Act requires agencies to include in rules which implement discretionary powers, the standards and criteria by which such discretionary power is exercised.

The Joint Committee objects to Regulation 14, Part B(4) because it fails to provide standards and criteria to guide claims adjudicators when determining whether to consider information on eligibility filed late.

Date Agency Response Received: November 27, 1981

Nature of Agency Response: Modify

Regulation 14, Parts B(4), B(5), and B(6), "Illinois Unemployment Insurance Act"
[Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1981

Specific Objections:

Section 702 of the Illinois Unemployment Insurance Act requires a claims adjudicator, for each week of claimed benefits or waiting period credit, to make "a 'determination' which shall state whether or not the claimant is eligible for such benefits or waiting period credit and the sum to be paid." In making such determinations, the claims adjudicator considers many eligibility requirements pertaining to claimants, such as their being able and available for work or actively seeking work. An employing unit may file an allegation of claimant ineligibility, for the claims adjudicator's consideration, if it believes a claimant is not fulfilling one or more of these requirements,

Once the determination is made, Section 702 requires that

The claims adjudicator shall promptly notify the claimant and such employing unit as shall, within the time and in the manner prescribed by the Director, have filed a sufficient allegation that the claimant is ineligible to receive benefits or waiting period credit for said week, of his "determination" and the reasons therefor.

It appears from this language of the Act that any employing unit which properly files a sufficient allegation of ineligibility, even if such allegation concerns and issue different than the one upon which the determination is based, is entitled to notice of that determination. Section 702 requires

only that such allegations be sufficient, and be filed within the time and in the manner prescribed.

The right to this notice of determination is important because a party entitled to such notice is also entitled to such notice is also entitled to appeal the determination; Section 800 of the Act states that determinations are final unless appealed by "a claimant or any other party entitled to notice..." Since any employing unit properly filing a sufficient allegation of ineligibility appears to be entitled to notice, any such employing unit would also be entitled to appeal any determination, regardless of the issue upon which it is based.

Parts B(4), B(5), and B(6) of Regulation 14 all refer to the right of an employing unit to receive notice of a determination "which relates to the ineligibility alleged to exist." What this means is that an employing unit does not receive notice of any determination, just those relating to its own specific allegation. The effect of Regulation 14, and the stated policy of the Department, is that notice of a determination is provided to an employing unit only to the extent that it relates to that employing unit's specific allegation. Consequently, an employing unit is allowed to appeal only with respect to the issue raised by its own allegation.

It appears that the Department's interpretation of statute, as set forth in Regulation 14, unduly restricts an employing unit's right to notice. The Joint Committee object to Regulation 14, parts B(4), B(5), and B(6), because these provisions restrict appeal rights of employing units only to notice of determination.

Date Agency Response Received: November 27, 1981

Nature of Agency Response: Refusal

Regulation 17(f), "Illinois Unemployment Insurance Act." [Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1981

Specific Objections:

Regulation 17(F) provides for the antedation (in effect, the retroactive consideration) of benefit claims filed up to one year late. Such late filed claims must be filed at the earliest time after which the reason for late filing no longer exists. Regulation 17(F) lists four reasons why a late filed claim would be accepted for this extended antedation:

- (1) The individual's unawareness of his rights under the Act, or
- (2) Failure of either the employing unit or of the Division of Unemployment Insurance to discharge its responsibilities or obligations under the Act or the regulations, or
- (3) Any act of any employing unit in coercing, warning, or instructing the individual not to pursue his benefit rights, or
- (4) Circumstances beyond the individual's control.

Section 4.02 of the Illinois Administrative Procedure Act requires any agency rule which implements a discretionary power to include standards governing the exercise of that power. Regulation 17(F) has listed four reasons, or standards, governing the discretionary acceptance of late claims for extended antedation. Unfortunately, Regulation 17(F) states that claims "may be antedated", or the individual "may be deemed to have reported" based on the reasons listed above. Use of the word "may," instead of "shall," indicates that there are more factors bearing on the decision to accept a late claim for extended antedation than those listed in the regulation, even though the four reasons listed are fairly broad. Use of the word "may" could allow the Department to refuse to accept a late filed claim for extended antedation even if all of the broad requirements of Regulation 17(F) were properly fulfilled.

The Joint Committee objects to Regulation 17(F) because it lacks adequate standards and criteria governing the acceptance for extended antedation of late filed claims.

Date Agency Response Recieved: November 27, 1981

Nature of Agency response: Modify

Regulation 24(F)(2), "Illinois Unemployment Insurance Act" [Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection:

Specific Objections:

Regulation 24(F)(2) states that "(n)o member of the Board of Review shall participate in the hearing of any appeal in which he has an interest." This regulation also provides that a challenge may be made to the interest of any member of the Board. Such challenge may be heard and decided by the Chairman of the Board of Review, or in the discretion of the Chairman, by the Director. Any action taken shall be made part of the record of the proceedings, and notice of such action shall be given to the challenging party and all other parties in interest. Clearly, action taken on such a challenge is in the discretion of either the Chairman or the Director, as the case may be, and is of considerable interest to the parties involved. Unfortunately, Regulation 24(F)(2) does not provide the standards and criteria by which a member of the Board is determined to actually have or not have an interest in an appeal.

Section 4.02 of the Illinois Administrative Procedure Act requires that any rule implementing a discretionary power must also set forth the standards by which the power is exercised. The Joint Committee objects to Regulation 24(F)(2) because it lacks adequate standards and criteria for making a decision regarding a challenge to the interest of a member of the Board of Review.

Date Agency Response Received: November 27, 1981

Nature of Agency Response: Modify

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1981

Specific Objections:

Regulation 28 sets forth the procedures and standards by which unemployment individuals are allowed to file claims, register for work, and report to the Department by mail, rather than in person as is usual.

Section 500 of the Illinois Unemployment Insurance Act requires that unemployed individuals register for work and continue to report "at an employment office" in order to be eligible for benefits. Section 500 also allows the Director, by regulation, to waive or alter these requirements under certain circumstances. Regulation 28 does this by setting forth the way individuals may be allowed under certain circumstances to file, register, or report by mail rather than in person.

Regulation 28, as it is written, appears to be consistent with the provisions of the Act. However, the Department has stated that since the inception of the computerized Benefit Information System in 1976, there are only two mandatory instances when every claimant has to be present in the local office. A claimant must file his or her initial claim, and return the following week for the interview, in person. All continued claims are currently handled through the mails. The computer sends out certification forms every two weeks to the claimant, who then continues his or her claim by sending these forms back to the office by mail.

The Department has stated that it has converted to this system to insure prompt payment of benefits, as required by Section 706 of the Act. With the large numbers of unemployed persons over the past few years, reporting in person would have bogged down the entire process. The Department has stated that it would like to return to requiring "in person" reporting when the unemployment picture stabilizes. It would seem, however, that the present system of reporting, filling and registering by mail is a permanent development.

Reporting by mail appears to speed and streamline the process of awarding benefits; reporting in person, though slower and less convenient, might tend to reduce the likelihood of improper payment of benefits. The best policy to pursue, and the policy which comes closest to the intent of the Act, is unclear.

What is clear, though, is how the current policy relates to the current rule. The Department itself states that this new system of filing by mail renders "determination of the basis for allowing certification through the mails meaningless." Obviously, Regulation 28, even though it is consistent with the Act as written, does not adequately reflect the actual policy of the Department.

The Joint Committee objects to Regulation 28 because it does not adequately reflect the actual policy of the Department.

Date Agency Response Received: November 27, 1981

Nature of Agency Response: Modify

Department of Mental Health and Developmental Disabilities

Rule 6.12, "Financial Supplementation of the Cost of Care for Qualifying Mentally Ill Children and Developmentally Disabled Persons Aged 3-21 in Licensed Private Facilities." [Emergency]

Publication in Illinois Register: September 18, 1981

Effective Date: September 2, 1981

Joint Committee Objection: October 21, 1981

Specific Objections:

This rulemaking provides that the educational component provided in conjunction with private residential placements of mentally ill and developmentally disabled minors assisted by the Department of Mental Health and Developmental Disabilities are provided at no cost to the parent. In addition, the rulemaking delineates the responsible relative liability system.

Section 5.02 of the Illinois Administrative Procedure Act states in pertinent part:

"Emergency" means the existence of any situation which any agency finds reasonably constitutes a threat to the public interest, safety or welfare.

Since the Department was mandated January 1, 1979, to promulgate rulemaking to implement Sections 5-105 through 5-115, it appears as though the emergency rule standards established under Section 5.02 of the Illinois Administrative Procedure Act have not been met. There does not appear to be a situation which "reasonably constitutes a threat to the public interest, safety or welfare." Further, any emergency which may exist is solely the result of the Department's failure to promulgate this rulemaking in a reasonably expeditious manner.

The Joint Committee objects to this emergency rulemaking because the standards established in Section 5.02 of the Illinois Administrative Procedure Act have not been met.

Date Agency Response Received: Pending

Nature of Agency Response: Pending

Department of Mines and Minerals

"Surface Coal Mining Land Conservation and Reclamation Act," and "Surface Mined Land Conservation and Reclamation Act."

Initial Publication in Illinois Register: July 17, 1981

Date Second Notice Received: October 7, 1981

Joint Committee Objection: November 17, 1981

Specific Objections:

1. Proposed Rule 1701.5 defines "siltation structure" as "a device, or devices, used to remove, collect or otherwise control runoff so that outflow will meet applicable effluent standards."

Sections 1816.42 and 1816.46 apply and describe the implementation and the required operation of these structures in the state of Illinois.

The Joint Committee objected to the proposed definition of "siltation structure" in the Illinois program rules because it violates 39 CFR 730 which requires that the state regulations be "no less effective than the federal regulations." Thus, the Illinois rules concerning "siltation structures" could be determined to be as effective provided:

The State program demonstrated that the particular siltation structures would be the best technology currently available and that the effluent standards would be met. In addition, the State program must include details governing each type of siltation structure to be used. (46 F.R. 53380)

The Department has complied with one requirement in that it has mandated that the outflow must meet applicable effluent standards. It appears, however, that for the rules to be as effective as the federal rules, the Department must demonstrate that the siltation structures will be the "best technology currently available" and also must include details governing each type of siltation structure to be used.

2. Proposed Sections 1816.65(f) and 1817.65(f) of this rulemaking establish limits that flyrock from blasting will be allowed to travel.

The Joint Committee objected to proposed Sections 1816.65(f) and 1817.65(f) because they fail to comply with 30 CFR 730.5 by being "less effective than" the Federal regulations in protecting dwellings and other occupied structures located outside the permit boundaries from flyrock resulting from blasting operations.

3. Proposed Sections 1816.133 and 1817.133 of this rulemaking establish criteria for determining acceptable postmining land uses.

The Joint Committee objected to proposed Sections 1816.133 and 1817.133 because they fail to comply with 30 CFR 730.5 by being "less effective than" the Federal regulations in determining whether alternative postmining land uses are higher or better than premining land uses as required by Section 515(b)(2) of the Surface Mining Control and Reclamation Act of 1977.

Date Agency Response Received: December 17, 1981

Nature of Agency Response: Refusal

Regulation 4.09, "Pharmacy Services"

Initial Publication in Illinois Register: March 13, 1981

Date Second Notice Received: May 8, 1981

Joint Committee Objection: May 13, 1981

Specific Objections:

The proposed amendment deletes coverage of over the counter items and legend items which are likely to be prescribed in the absence of over the counter product coverage (except for certain specified items) under the Department's Medical Assistance Program.

The Joint Committee objects to this proposed rulemaking because the inclusion of these additional over the counter items as covered pharmacy items under the Medical Assistance Program which are listed in the second notice and revised second notice letter are substantive changes which significantly change the scope and impact of this rulemaking and are in violation of Section 5.01 of the IAPA.

The Joint Committee objects to this proposed rulemaking because the Department promulgated these specific changes during the second notice period without effectively consulting with the Legislative Advisory Committee, as required by Section 5-5 of the Public Aid Code, Ill. Rev. Stat. 1979, ch. 23, par. 5-5.

Date Agency Response Received: June 9, 1981

Nature of Agency Response: Refuse

Publication as Adopted in Illinois Register:

Effective Date:

Rule 3.01, "Assistance Programs." Rule 3.515, "Assistance Standards: Income Maintenance GA and AFDC Cases"

Initial Publication in Illinois Register: August 7, 1981

Date Second Notice Received: September 29, 1981

Joint Committee Objection: October 21, 1981

Specific Objections:

This proposed rulemaking eliminates cash grants under the AFDC program to pregnant women with no other dependent children. However, provision for Medicaid is made for those pregnant women with no other dependent children who meet the eligibility criteria for AFDC or MANG (Cr) if in fact the child had already been born.

If the Department does adopt this proposed rulemaking, an incomplete and inconsistent form of Rule 3.01, AFDC will exist. The portion of Rule 3.01, AFDC adopted as a Peremptory Rule effective October 1, 1981, will remain ("if payment is for the month in which the child is expected to be born or for the three month period prior to that month").

The Joint Committee objected to this proposed rulemaking because adoption of same would result in an incomplete and inconsistent form of Rule 3.01 which would tend to cause undue misunderstandings by persons affected by the rule, and therefore violate Section 7.06 of the Administrative Procedure Act.

Date Agency Response Received: October 27, 1981

Nature of Agency Response: Modify

Publication as Adopted in Illinois Register: November 13, 1981

Effective Date: November 1, 1981

Regulation 5.03, "General Requirements for Service Providers Desiring to Participate"

Initial Publication in Illinois Register: November 21, 1980

Date Second Notice Received: March 12, 1981

Joint Committee Objection: April 13, 1981

Specific Objections:

The IAPA defines a "rule" as "each agency statement of general applicability which implements, applies, interprets, or prescribes law or policy..." It appears that the handbook does contain sections which prescribe Department policy. Clearly, then, the handbook is an "agency statement...that interprets, or prescribes law or policy." The handbook appears to prescribe and interpret Department policy in Section VI (Technical Assistance Materials) regarding Administrative Section VI (Technical Assistance Materials) regarding Administrative Procedures, Payment Methods, Reporting/Auditing Requirements and Expenditures other than unallowable costs. Since this Department policy is not included in this rule, this rulemaking does not accurately reflect agency policy contained in the handbook. The Joint Committee objects to this rulemaking because Section VI (Technical Assistance Materials) of the handbook states policy which meets the definition of "rule" as stated in the Illinois Administrative Procedure Act and which is not contained in proposed Rule 5.03.

Date Agency Response Received: July 22, 1981

Nature of Agency Response: Withdrawal

Department of Public Health

Regulation Relating to the "Emergency Medical Services Systems Act."

Initial Publication in Illinois Register: January 30, 1981

Date Second Notice Received:

Joint Committee Objection: May 13, 1981

Specific Objections:

This proposed rulemaking replaces rulemaking that was filed on December 17, 1980. It establishes minimum standards for the training, certification and recertification of emergency medical technicians; establishes minimum standards for the licensure of ambulances; establishes minimum standards for the approval of Advanced Life Support/Mobil Intensive Care; and all other provisions of P.A. 81-1518.

The Joint Committee objects to this entire proposed rulemaking because it was proposed without the advice of the Emergency Medical Services Council in violation of Section 16 of the Emergency Medical Services Act (Ill. Rev. Stat., ch. 111 $\frac{1}{2}$, par. 5516).

Date Agency Response Received: May 19, 1981

Nature of Agency Response: Refuse

Department of Registration and Education

Rules I-XVI, "Rules for the Administration of the Detection of Deception Examiners Act"

Initial Publication in Illinois Register: August 7, 1981

Date Second Notice Received: October 27, 1981

Joint Committee Objection: November 17, 1981

Specific Objections:

Proposed Section 230.60 b) of this rulemaking provides a method for evaluating an applicant's out-of-state training to determine whether the applicant should be given credit for that training. Paragraph 4) of this proposed Section includes an automatic repealer of the Section effective July 1, 1983.

The Joint Committee objects to proposed Section 230.60 b) 4) on the basis that it violates Sections 5 and 5.01 of the Illinois Administrative Procedure Act by circumventing the rulemaking process.

Date Agency Response Received; January 7, 1982

Nature of Agency Response: Refuse

Publication as Adopted in Illinois Register:

Effective Date:

Rules 3, 39, 40 and 43 for the Administration of the Illinois Controlled Substances Act.

Initial Publication in Illinois Register: November 7, 1980

Date Second Notice Received: January 16, 1981

Joint Committee Objection: March 2, 1981

Specific Objections

The proposed amendment to Rule 39 (C) would direct Public Health Service practitioners to issue prescriptions for Schedule II controlled substances on "conventional prescription forms, not triplicate prescription blanks." The proposed amendment to Rule 40 (A) would permit pharmacists to fill such prescriptions and to fill prescriptions for out-of-state practitioners.

The Joint Committee objects to these proposed amendments because there is no statutory authority for these exemptions from the statutory requirements (found in Chapter 56½, sections 1308 and 1309) which say that practitioners shall issue such prescriptions on triplicate prescriptions blanks, and pharmacists shall, except in emergencies, honor only triplicate blanks for Schedule II controlled substances prescriptions. Under section 7.06 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, Ch. 127, para. 1007.06), the Joint Committee may examine the proposed rule to determine whether it "is within the statutory authority on which it is based".

Date Agency Response Received: March 25, 1981

Nature of Agency Response: Refusal

The Joint Committee is recommending specific legislation to remedy this situation (see Recommended Bill Eight, pages 207-216).

Department of Rehabilitation Services

Rules and Regulations to Govern the Operation of State Operated Schools

Initial Publication in Illinois Register: February 27, 1981

Date Second Notice Received: August 20, 1981

Joint Committee Objection: September 23, 1981

Specific Objections:

Proposed rules 1.02-3, 1.03-3 and 1.04-3 allow a handicapped child's parents to refer that child directly for admission to the State Schools.

The Joint Committee objects to proposed rules 1.02-3, 1.03-3 and 1.04-3 because allowing a child's parents to refer that child directly to a State School, without a determination that the local district cannot provide a

satisfactory education for that child, is in violation of the regulations to implement P.L. 94-142, specifically 45 CFR 121a.550, 121a.551 (1980) and conflicts with Article VIII of the State Board of Education's Rules and Regulations to Govern the Administration and Operation of Special Education.

Article X prescribes the due process hearing and appeals available to resolve disputes between the parents and the State School. This Article provides for an initial due process hearing, and appeal to the Director of the Department of Rehabilitation Services, and another appeal to the Superintendent of Education.

The Joint Committee objects to Article X because it allows for one more appeal than is contemplated by the federal regulations implementing P. L. 94-142, and that additional appeal will result in a hearings process which will exceed the time limitations specifically stated in 45 CFR 121a.512 (1980).

Date Agency Response Received: November 19, 1981

Nature of Agency Response: Modify Refusal

Department of Revenue

Income Tax Regulations Sections 300-2, 304-1, 304-2, 304-3, 304-4 and 304-5

Initial Publication in Illinois Register: July 17, 1981

Date Second Notice Received: October 27, 1981

Joint Committee Objection: November 17, 1981

Specific Objections:

As a result of the decision in Caterpillar Tractor Co. v. Lenckos, 84 Ill.2d 102, 417 N. E. 2d 1343 (1981), the Department of Revenue has proposed extensive changes in the manner in which corporation must report their income. Proposed Section 304-1 requires that the income of "three factor" companies be combined with that of "single factor" companies if the corporations are engaged in unitary business.

The Joint Committee objected to Section 304.1 of this proposed rulemaking because the Department has exceeded its statutory authority by including "three factor" companies with "single factor" companies to determine Illinois income. This exceeds the authority granted under Section 304 of the Illinois Income Tax Act and violates Section 7.06 of the Illinois Administrative Procedure Act. Consequently, Section 304-1 violates Section 5.01 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1005.01).

Proposed Section 304.5 of the Regulations provides that the Director may require or permit an alternative to the regular methods prescribed in Sections 304(a) through (d) of the Illinois Income Tax Act, where, in his opinion, an inequitable apportionment will result.

The Joint Committee objected to Section 304-5 of the Regulations because it violates Section 4.02 of the Illinois Administrative Procedure Act by

implementing a discretionary authority without proper standards and criteria.

Date Agency Response Received: December 17, 1981

Nature of Agency Response: Modify

Publication as Adopted in Illinois Register: January 8, 1982

Effective Date: December 29, 1981

Illinois Income Tax Reg. Sections 709-1 through 709-5

Initial Publication in Illinois Register: May 29, 1981

Date Second Notice Received: July 27, 1981

Joint Committee Objections: August 19, 1981

Specific Objections:

Proposed Rule 709.5 and examples #1 and #3 provides that no money shall be withheld from Illinois payments made to non-residents unless the payment is strictly based on "relative performance".

The Joint Committee objects to Proposed Rule 709.5 and examples #1 and #3 because the Department lacks statutory authority to interpret the language, "relative performance," in such a manner that it frustrates legislative intent with regard to withholding requirements.

Date Agency Response Received: November 13, 1981

Nature of Agency Response: Modify

Publication as Adopted in Illinois Register: November 30, 1981

Effective Date:

Regulations Sections 505-1, 505-2, 505-3, 505-4, 505-5, 505-6, 505-7, and 505-8; To Repeal Existing Illinois Tax Reg.

Initial Publication in Illinois Register: September 26, 1980

Date Second Notice Received: February 13, 1981

Joint Committee Objection: March 18, 1981

Specific Objections:

This proposed rule provides for retroactive revocation of a filing date deadline extension for submission of the Illinois Income Tax return. The revocation is made for the specific purpose of assuring that the taxpayer may be exposed to the penalty for the "failure to file a return" as set forth in Ill. Rev. Stat., Chapter 120, section 10-1001.

The Joint Committee objects to the part of this rule providing for retroactive revocation on the grounds that the Department lacks statutory

authority to make such a rule and is therefore in violation of section 7.06 of the Administrative Procedure Act.

Date Agency Response Received: June 17, 1981

Nature of Agency Response: Modify

Publication as Adopted in Illinois Register: June 26, 1981

Effective Date: June 16, 1981

Constitutional Offices

Attorney General

Rule 6, "Rules on Regulations Promulgated by the Consumer Fraud and Protection Division" [Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1981

Specific Objections:

Rule 6 of the Consumer Fraud and Protection Division's rules states that a hearing on complaints are "informal proceeding." The Division explained that the term "informal proceeding" means "in part, that any determination arrived at after the hearing is non-binding in nature and that the hearing does not adjudicate the rights of either the complainant or the respondent." Rule 10 provides, however, that "upon a finding by a Hearing Officer that a violation has occurred, the respondent shall have 5 days to comply with the order of the Division" unless otherwise specified in the order. The Division has also described its hearing procedure as a "voluntary complaint investigation and mediation process." However, the notice of hearing issued under Rule 5 contains a statement that a attendance is "required."

The characterization of these rules as "voluntary" and "non-binding" is not consistent with severe consequences faced by the respondent for failure to cooperate with the Division. Once a determination has been made that a violation has occurred, the respondent is faced with the choice of either obeying the "non-binding" order issued by the Division or facing an action brought by the Attorney General under Section 7 of the Act for injunctive relief. In addition to seeking an injunction restraining the respondent from violating the Act, the Attorney General may seek: "revocation, forfeiture or suspension of any license, charter, franchise, certificate or other evidence of authority of any person to do business in this State; appointment of a receiver; dissolution of domestic corporations or association suspension or termination of the right of foreign corporations or association suspension or termination of the right of foreign corporations or associations to do business in this State; and restitution." (Ill. Rev. Stat. 1979, ch. 121½, par. 267). The Act also is true that the court must ultimately decide whether a violation of the Act has occurred in a de novo proceeding, it is also likely that respondent will be reluctant to test the Attorney General's determination in court. Even

before the Attorney General makes a finding that the Act has been violated, he has similar powers to seek injunctive relief and revocation of authority to do business under Section 6 of the Act if a respondent refuses to file a statement or reporter or to obey a subpoena as directed by the Attorney General (Ill. Rev. Stat. 1979, ch. 121½, par. 266). Therefore, once the Attorney General initiates the "investigative" hearing process, the respondent is subject to possible severe sanctions if he fails to cooperate with the Attorney General.

Apart from the fact that the Division's rules fail to adequately inform the public of the nature and effect of the hearing, the rules do not accurately reflect the operations of the Springfield (or downstate) office of the Consumer Fraud and Protection. The Attorney General's office has indicated that the implemented at the Chicago office of the Division, but not necessarily at the jurisdiction over the whole state except the Chicago area and that the informal hearing procedure was not always a practical or efficient method for investigating possible violations. Whatever differences in operation that exist between the two offices should be stated by rule to the extent necessary to notify the affected public of their rights and obligations in the two jurisdictions.

The Joint Committee Objects to the Attorney General's Consumer Fraud and Protection Division's Rules and Regulations because the rules fail to accurately and adequately advise the public of the nature, scope and policy of the Office of the Attorney General.

Date Agency Response Received: December 3, 1981

Rule 3, "Rules and Regulations Promulgated by the Consumer Fraud and Protection Division [Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1981

Specific Objections:

Rule 3 of the Consumer Protection Division Rules provides that "each complaint will be reviewed to determine whether the Attorney General has jurisdiction thereof." The term "jurisdiction" as used in this rule ordinarily would be interpreted as the power to investigate or prosecute violations of the Act. It would appear to follow that if the Division determines that the facts alleged in the complaint amount to a violation of the Act, the Division has jurisdiction over the complaint.

However, in response to an inquiry, the Division indicated that "it is a matter of prosecutorial discretion whether to accept jurisdiction over a particular complaint" and that "the prosecutorial discretion of the Attorney General's office is tempered by case law and exercised by individuals who are legally trained."

Apart from the requirements imposed by the Consumer Fraud and Deceptive Business Practices Act, section 4.02 of the Illinois Administrative

Procedure Act provides that "each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power" (Ill. Rev. Stat. 1979, ch. 127, par. 1004.02). The Attorney General should state, by rule, the standards by which he determines whether and in what manner he will utilize the investigative power, including the power to hold hearings. Such rulemaking should also include recognition of the Attorney General's power to investigate possible violations of the Act on his own initiative "when he believes it to be in the public interest" (Ill. Rev. Stat. 1979, ch. 121½, par. 263).

The Joint Committee objects to the failure of the rule to accurately reflect the "prosecutorial discretion" policy, and to the lack of standards in Rule 3 of the Consumer Protection Division Rules for determining whether the Division has or will take "jurisdiction" over a complaint.

Date Agency Response Received: December 3, 1981

Nature of Agency Response: Refuse

Rules 4, 5, "Rules and Regulations Promulgated by the Consumer Fraud and Protection Division" [Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1981

Specific Objections:

Rule 4 provides that

If the Division determines that it has jurisdiction, it shall inform the respondent by mail; (1) the substance of the complaint filed against him; (2) when and by whom it was filed; (3) that the respondent has the right to respond to the complaint; (4) that any response must be sent by mail within 5 days following receipt of the Division's letter; and (5) that unless a response is made demonstrating clearly that the Division lacks jurisdiction or that there is no substantial claim, a hearing may be set on the matter.

Rule 5 provides that the Division "may call a hearing respecting any complaint and fix the date and place of hearing." The rule also provides for notice of hearing to each party "at least 5 days prior to the hearing date."

In response to inquiries concerning the 5 day response period, the Division stated that it "usually allows additional time" when respondent indicates that he cannot respond within the time allowed. This policy is not stated in the rule. If the policy of the Division is to allow extensions for responding to complaints under circumstances, this policy should be included in the rules together with a statement of the circumstances under which an extension will be allowed.

Further, both rules 4 and 5 indicate that there is discretion as to whether a hearing will be set--i.e., that a hearing "may" be set. This problem relates to the questions raised as to discretion of the Attorney General to accept or reject jurisdiction. Section 4.02 of the IAPA requires each agency set forth the standards and criteria used to govern the exercise of discretion. The IAPA makes no exception for "Prosecutorial discretion".

Under these rules, in addition to deciding to not have a hearing at all, where a decision is made to have a hearing, the Division may presumably wait indefinitely before calling the hearing on a complaint. It could also presumably set the location mandate of Section 4.02 of the IAPA, fundamental fairness requires that the Division inform the parties to a complaint of its procedures for determining if, when and where a hearing will be held.

The Joint Committee objects to Rule 4 because the rule fails to accurately reflect relevant agency policy, and lacks adequate standards and criteria for determining when additional time will be allowed a respondent to respond to the division's letter.

The Joint Committee objects to Rule 5 because the rule fails to include adequate standards and criteria by which to determine whether a hearing respecting any complaint will or will not be called, and when and where any such hearing will be held.

Date Agency Response Received: December 3, 1981

Nature of Agency Response: Refuse

Rule 6, "Rules and Regulations promulgated by the Consumer Fraud and Protection Division [Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1981

Specific Objections:

Rule 6 prescribes procedures for the conduct of the Division's hearings on complaints. The rule provides, in part, as follows:

The division may, on its own motion, subpoena witnesses or tangible evidence. A party may, within a reasonable time before the hearing date, request the Division to subpoena witnesses or tangible evidence. Such request shall be granted when the Hearing Officer deems it appropriate.

Rule 6 clearly lacks necessary standards for the exercise of the discretionary power of the Division to subpoena witnesses or tangible evidence, either on the Division's own motion or at the request of a party to the hearing. Section 4.02 of the IAPA requires such standards where discretionary power is asserted.

The Joint Committee objects to Rule 6 because the rule fails to include adequate standards and criteria for determining when a request for a subpoena of witnesses and/or tangible evidence will or will not be granted.

Date Agency Response Received: December 3, 1981

Nature of Agency Response: Refuse

Rule 9, "Rules and Regulations Promulgated by the Consumer Fraud and Protection Division" [Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1981

Specific Objections:

Rule 9 provides that a continuance "may be granted in the discretion of the Hearing Officer for good cause." The rule also provides that requests "made within 48 hours of the hearing will be granted only in a case of unexpected emergency."

The language "may be granted in the discretion of the Hearing Officer for good cause" is insufficient to satisfy the mandate of Section 4.02 of the IAPA, which requires that standards for the exercise of discretion "be stated as precisely and clearly as practicable under the conditions..."

The Joint Committee objects to Rule 9 because the rule fails to include adequate standards and criteria for determining when continuances will be granted.

Date Agency Response Received: December 3, 1981

Nature of Agency Response: Refuse

Rule 11, "Rules and Regulations Promulgated by the Consumer Fraud and Protection Division" [Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1981

Specific Objections:

Rule 11 provides that an Assurance of Voluntary Compliance (AVC) "may, in the discretion of the Chief of the Division, be made open to public inspection or disseminated to the public media." In response to an inquiry, the Division stated that "as a matter of policy, all assurances of voluntary compliances are open for public inspection."

The IAPA defines "rule" as any agency statement of general applicability which prescribes law or policy. If it is the Division's policy to make all AVC's open for public inspection, this policy should be so stated in the rule.

The Joint Committee objects to Rule 11 because the rule fails to accurately reflect relevant agency policy.

Rule 11 of the Consumer Protection Division Rules provides that the Chief of the Division may, in his discretion, in lieu of or in addition to calling a hearing, accept an Assurance of Voluntary Compliance (AVC) from any respondent." Section 6.1 of the Act authorizes AVC's and provides that proof of a violation of an AVC "shall be prima facie evidence of a violation of Section 2 in any subsequent proceeding brought by the Attorney General against the alleged violator." (Ill. Rev. Stat. 1979, ch. 121½, par. 266.1).

In permitting the Chief of the Division to accept an AVC in lieu of a hearing, the possibility for abuse of discretion is present. The possibility for abuse is also present in the discretionary power to refuse a request for an AVC. Standards to limit the Division's discretionary power are necessary to protect the rights of both the respondent and the complainant.

Section 4.02 of the IAPA requires that agency rules which assert a discretionary power "include the standards by which the agency shall exercise the power." Rule 11 fails to include the standards mandated by Section 4.02 of the IAPA.

The Joint Committee objects to Rule 11 because the rule fails to include adequate standards and criteria for determining whether, and under what conditions, the Attorney General will accept an assurance of voluntary compliance.

Date Agency Response Received: December 3, 1981

Nature of Agency Response: Refuse

Secretary of State

Notices of Corrections, Title 1; Part 160; Section 160.204; of the "Rules on Rules".

Initial Publication in Illinois Register: February 20, 1981

Date Second Notice Received: April 21, 1981

Joint Committee Objection: May 13, 1981

Specific Objections:

This rulemaking prescribes standards and conditions for the Secretary of State to publish agencies' Notice of Corrections in the Illinois Register. The Rules Division will publish agencies' Notices of Corrections, as defined in the rule, to correct any deficiencies in an agency's proposed rulemaking. After the rule is officially filed and adopted, however, the Division will decline to publish any corrections or file any replacement pages.

The Joint Committee objects to this proposed rulemaking as in violation of Section 5.01 of the Illinois Administrative Procedure Act because the second notice alteration was effected neither in response to public comment nor a Joint Committee recommendation and was so material and substantial in impact that it warranted a new notice and comment period.

Date Agency Response Received: May 22, 1981

Nature of Agency Response: Withdrawn

Other Agencies

Abandoned Mined Lands Reclamation Council

Abandoned Mined Lands Reclamation Council Part 501 - Abandoned Mined Lands Reclamation.

Initial Publication in Illinois Register: May 29, 1981

Date Second Notice Received: July 27, 1981

Joint Committee Objection: August 19, 1981

Specific Objections:

Proposed Sections 501.1, 501.7 (d), 501.10(b), 501.13(b)(1) and 501.13 (e) allow the Abandoned Mined Lands Reclamation Council to reclaim "non-coal mined" lands and water.

The Joint Committee objects to these proposed Sections because the Abandoned Mined Lands Reclamation Council has no statutory authority to reclaim lands and water affected by non-coal mining activities.

Date Agency Response Received: September 23, 1981

Nature of Agency Response: Refusal

Environmental Protection Agency

Procedures and Criteria for Reviewing Applications for Provisional Variances.

Initial Publication in Illinois Register: January 9, 1981

Date Second Notice Received:

Joint Committee Objections: May 13, 1981

Specific Objections:

Proposed rule 180.201. This proposed rule defines who may apply for a provisional variance.

The Joint Committee objects to this proposed rule because it contains a definition of the word "person" that is inconsistent with Section 3(p) of the Environmental Protection Act (Ill. Rev. Stat. 1979, ch. 111½, par. 1003 (p)), and therefore exceeds the Agency's statutory authority.

Date Agency Response Received: May 27, 1981

Nature of Agency Response: Modify

Publication as Adopted in Illinois Register: June 12, 1981

Effective Date: June 12, 1981

Access to Information of the Illinois Environmental Protection Agency.

Initial Publication in Illinois Register: March 13, 1981

Date Second Notice Received: July 22, 1981

Joint Committee Objection: August 19, 1981

Specific Objections:

Proposed sections 160.302, 160.401 and 160.402 provide standards and criteria for determining the confidentiality of information and the justification of claims of confidentiality of submitted information.

The Joint Committee objects to these specific sections because the Agency has exceeded the scope of their statutory authority outlined in Section 4 of the Environmental Protection Act. Section 7.1 of the Act states that only the Pollution Control Board is empowered to promulgate rules with respect to trade secrets and confidential business information. Since the explicit authority in this area has been granted to the Board, the Agency must propose these sections to the Board of promulgation in order to comply with the Illinois Administrative Procedure Act.

Date Agency Response Received: September 9, 1981

Nature of Agency Response: Refused to modify or withdraw

Publication as Adopted in Illinois Register:

Effective Date:

The Joint Committee is recommending specific legislation to remedy this situation (see Recommended Bill Five, pages xx-xx).

Illinois Health Finance Authority

Rules 1,3,10 and 13 Implementing the Illinois Health Finance Authority Act

Initial Publication in Illinois Register: March 6, 1981

Date Second Notice Received: May 21, 1981

Joint Committee Objection: June 16, 1981

Specific Objections:

1. Rule 1, Article 1, Section 1.07. This proposed Section provides a definition of "hospital services," to be used throughout the IHFA's Required Rules to Implement the Illinois Health Finance Authority Act.

The Joint Committee objects to this proposed Section 1.07 because it fails to include all of the services licensed under the Illinois Hospital Licensing Act in violation of the intent of the Illinois Health Finance Authority Act as evidenced by the Section 3(b) definition of "hospital."

2. Proposed Rule 3. This rule implements a uniform system of financial reporting consisting primarily of the Uniform Hospital Report.

The Joint Committee objects to proposed Rule 3 because the adoption of this Rule before the completion of the Uniform Hospital Report violates Section 7.01 of the Health Finance Authority Act by rendering the public hearing requirement of that Section meaningless.

As a second ground for objecting to Rule 3, the IHFA has violated Section 7.01 of the Act by failing to give consideration to differences in hospital sizes in developing the Uniform Hospital Report.

3. Proposed Rule 10, Article II, Section 2.03 through 2.08. These proposed Sections implement procedures by which the IHFA can grant payor differentials.

The Joint Committee objects to these proposed Sections 2.03 through 2.08 because the IHFA has violated Section 9.02 of the Health Finance Authority Act by negotiating payor differentials with Blue Cross and Medicare prior to a proper showing by either payor of a demonstrated cost difference in providing services to patients covered by these payors.

4. Proposed Rules 1, 3, 10, and 13. Proposed Rule 1 implements rules of organization for the IHFA. Proposed Rule 3 implements a uniform system of financial reporting. Proposed Rule 10 implements procedures for group adjustments. Proposed Rule 13 implements procedures and standards for determining when information is privileged.

The Joint Committee objects to proposed Rules 1, 3, 10, and 13 because Section 9.09 of the Health Finance Authority Act requires participation of the federal government in the program, and the IHFA is trying to induce that participation by offering the federal government a "contingent liability" agreement which it does not have the statutory authority to enter to enter into and which violates the intent of the Illinois Health Finance Authority Act is improper and violates the intent of the Illinois Administrative Procedure Act.

Date Agency Response Received: July 17, 1981

Nature of Agency Response: Modify

Publication as Adopted in Illinois Register: November 13, 1981

Effective Date: October 29, 1981

Additional discussion of the issues involved in these rules is located on pages 30-32.

Rules required to Implement the Illinois Health Finance Authority Act

Initial Publication in Illinois: March 6, 1981

Date Second Notice Received: August 21, 1981

Joint Committee Objection: September 23, 1981

Specific Objections:

1. Proposed Rule 4, Section 2.03 prescribes an Economic Adjustment factor to be added to or subtracted from the Incentive Rate Base. This Economic Adjustment is to reflect the estimate rate of inflation faced by hospitals beyond the reasonable control of any specific hospital. When computing compensation inflation, this factor only considers existing hospital personnel and does not consider the possibility that a hospital may be understaffed at the time when data is collected.

The Joint Committee objects to proposed Rule 4, Section 2.03 because it effectively limits hiring practices in violation of Section 3 of the Health Finance Authority Act. The Joint Committee believes that this problem can be remedied by the addition to Rule 6 of a new category of Limited Review for hospitals that need to hire additional nurses.

2. Proposed Rule 4, Section 5.03 and proposed Rule 9, Section 3.02(D), (E) and (G) concern seven Revenue Compliance Corridors which are to be used to limit crosssubsidization. Proposed Rule 7, Section 3.04 specifically states that in a Full Review, the Authority will attempt to limit cross-subsidization.

The Joint Committee objects to proposed Rule 4, Section 5.03, proposed Rule 7, Section 3.04, and proposed Rule 9, Section 3.02(D),(E), and (G) because any attempts to limit cross-subsidization exceed the Health Finance Authority's statutory authority.

Date Agency Response Received: October 27, 1981

Nature of Agency Response: Modify

Publication as Adopted in Illinois Register: November 13, 1981

Effective Date: October 29, 1981

Additional discussion of the issues involved in these rules is located on Pages 30-32.

Articles I, IV, X, XV, and XIX of Rule 1 (Rules of Organization); Rule 3 (Uniform System of Financial Reporting); Rule 10 (Group Adjustments); Rule 13 (Privileged Information).

Initial Publication in Illinois Register: August 14, 1981

Date Second Notice Received: October 1, 1981

Joint Committee Objection: October 21, 1981

Specific Objections:

1. Proposed Rule 1, Section 1.06.A provides a definition of "Hospital Services."

The Joint Committee objects to proposed Rule 1, Section 1.06.A because failure to include all services licensed under the Illinois Hospital Licensing Act within the definition of "hospital service" violates Section 3(b) of the Illinois Health Finance Authority Act.

2. Proposed Rule 3, Article 1 gives an overview of the Uniform System of Financial Reporting and states that in developing that System the Authority has considered those factors required by the Illinois Health Finance Authority Act.

The Joint Committee objects to proposed Rule 3, Article 1 because in developing small hospital reporting forms, as required by Section 7.01(b) of the Illinois Health Finance Authority Act, the Authority has not given adequate consideration to the factors delineated in that Section.

3. Proposed Rule 10, Section 2.03.D describes the mechanism by which the Authority can grant payor differentials to each State agency and major Federal program responsible for making payments to hospitals for health care services in order to induce those payors to participate in the Authority's rate-setting program.

The Joint Committee objects to proposed Rule 10, Section 2.03.D because the Authority may have an unwritten policy of entering into a "contingent liability" or "Medicare cap" agreement with the Federal government which meets the definition of a rule pursuant to the Illinois Administrative Procedure Act and which should be included in proposed Rule 10, Section 2.03.D.

Date Agency Response Received: October 26, 1981

Nature of Agency Response: Modify

Additional discussion of the issues involved in these rules is located on pages 30-32.

Illinois Industrial Commission

Rule 2-(4)(A), "Workman's Compensation and Occupation Diseases Act" [Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1981

Specific Objections:

Rule 2-(4)(A) states:

Only attorneys licensed to practice in the State of Illinois may appear on behalf of parties to litigation before the Industrial Commission. This specifically includes the presentation of Settlement Contracts and Lump Sum Petitions. Attorneys licensed to practice in states other than Illinois may appear with leave of the Commission.

As the rule currently reads, the judgement and determination of whether or not an attorney licensed to practice in states other than Illinois, will be allowed to appear before the Commission lies within the discretion of the

Commission. When the Commission was asked what standards and criteria are used by the Commission in determining whether or not leave will be granted, the Commission stated that it grants out of state attorneys permission to appear before the Commission applying standards of reasonableness and fairness.

It appears that the mandate of Section 4.02 of the IAPA, which requires that each rule which implements a discretionary power include the standards by which the agency shall exercise the power, is not being fulfilled. The Joint Committee objects to Rule 2-(4)(A) because the rule fails to include the standards and criteria used by the Commission in determining whether or not to allow attorneys licensed in other states, to appear before the Commission.

Date Agency Response Received: November 16, 1981

Nature of Agency Response: Modify

Rule 3-(4)(C). "Workman's Compensation and Occupation Diseases Act" [Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1981

Specific Objection:

Rule 3-(4)(C) sets forth provisions on depositions and states:

Except as provided in paragraph (F) below, no dedimus potestatem shall be issued unless a copy of the application, together with all documents required by this rule to be attached to said application, has been served on the opposing party and proof of service of such copy made as provided in Rule No. 2-(8)(A) hereof.

The opposing party may, within five (5) days after the receipt of the copy of the application, file written objections to the issuance of the dedimus potestatem. The Commission shall rule on such objections before the issuance of the dedimus potestatem.

As the rule currently reads, the judgment and a determination of whether a dedimus potestatem will or will not be issued lies within the discretion of the Commission.

It appears that the mandate of Section 4.02 of the IAPA, which requires that each rule which implements a discretionary power include the standards by which the agency shall exercise the power, is not being fulfilled. The Joint Committee objects to Rule 3-(4)(C) because the rule fails to include adequate standards and criteria to be used by the Commission in determining when a dedimus potestatem will and will not be issued.

Date Agency Response Received: November 16, 1981

Nature of Agency Response: Refusal

Rule 4-(1), "Workman's Compensation and Occupation Diseases Act" [Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1981

Specific Objections:

Rule 4(1) sets forth provisions on petitions to reinstate and states, in part:

Petitions to reinstate must be in writing and filed with the Commission. The petition should set forth the reason the case was dismissed and the grounds relied upon for reinstatement. A copy of the petition must be served on the other side at the time filing with the Commission. The opposing side shall have ten (10) days to file a written answer to the petition with the Commission.

As the rule currently reads, the judgement and determination of which grounds will and will not be considered appropriate grounds upon which to grant reinstatement lies within the discretion of the Commission. The rule contains no indication of what standards the Commission will use to reach a decision.

It appears that the mandate of Section 4.02 of the IAPA, which requires that each rule which implements a discretionary power include the standards by which the agency shall exercise the power, is not being fulfilled. The Joint Committee objects to Rule 4(1) because the rule fails to include adequate grounds will and will not be considered appropriate grounds upon which to grant reinstatement

Date Agency Response Received: November 16, 1981

Nature of Agency Response: Refusal

Rule 7-(2)(B). "Workman's Compensation and Occupational Diseases Act" [Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1982

Specific Objections:

Rule 7-(2)(B) provides that "in all cases, but in particularly those involving either minor petitioners or minor beneficiaries, the Commission reserves the right to elicit evidence concerning the use to which the proceeds of the settlement are to be put."

As the rule currently reads, the judgement and determination of whether the Commission will or will not elicit such evidence lies within the discretion of the Commission.

It appears that the mandate of Section 4.02 of the IAPA, which requires that each rule which implements a discretionary power include the

standards by which the agency shall exercise the power, is not being fulfilled. The Joint Committee objects to Rule 7-2(2)(B) because the rule fails to include adequate standards and criteria to be used by the Department in determining in which cases the Commission will and will not elicit evidence concerning the use of proceeds.

Date Agency Response Received: November 16, 1981

Nature of Agency Response: Refusal

Rule 9-(1), "Workman's Compensation and Occupational Diseases Act" [Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1981

Specific Objections:

Rule 9-(1) of the Industrial Commission's Rules Governing Practice before the Industrial Commission Under the Workman's Compensation and Occupational Disease Act states, in part:

Where a verified, written allegation of improper, unethical or contemptuous conduct is made against an attorney, relating to practice before the Commission, by a party to pending litigation or any officer of the Commission, the Commission may hold a hearing to determine the truth or falsity of the allegations.

This rule also provides, in part:

If, at the conclusion of the hearing, the Commission finds the attorney has acted improperly, unethically, or contemptuously, the Commission may take appropriate disciplinary action against the attorney, not inconsistent with the Illinois Supreme Court's jurisdiction over professional conduct of attorneys or the provisions of the Workman's Compensation Act.

When the Industrial Commission was asked to cite the Commission's specific statutory authority for the disciplining of these individuals, the Commission cited Section 16 of the Act, which provides in part, that "the Commission shall make and publish procedural rules and orders for carrying out the duties imposed upon it by law...". The Industrial Commission does not have the explicit statutory authority to discipline attorneys or agents.

The Joint Committee objects to Rule 9-(1) of the Industrial Commission's Rules Governing Practice Before the Industrial Commission Under the Workman's Compensation and Occupational Disease Act because the Industrial Commission lacks the explicit statutory authority to discipline attorneys and agents.

Date Agency Response Received: November 16, 1981

Nature of Agency Response: Refusal

Rule 10-(7)(A), "Workman's Compensation and Occupational Diseases Act" [Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1981

Specific Objections:

Rule 10-(7)(A) of the Industrial Commission's Rules and Regulations Governing Practice Before the Workman's Compensation and Occupational Diseases Act provides, in part, that "the Commission may require, as a condition precedent to approval of an application as a self-insurer, that the applicant make a deposit of money or securities in escrow, or a surety bond in such amounts as may be fixed and approved by the Commission."

As this rule currently reads the judging, determining requiring of applicants to deposit money, securities in escrow or surety bond so that their application for self-insurance will be approved, lies within the discretion of the Commission. When the Commission was asked if it had any standards for criteria, written or unwritten, which govern the discretion of the Commission's in deciding whether or not such deposit will be required, the Commission stated that it had established written guidelines for self-insurance.

It appears that the mandate of Section 4.02 of the IAPA, which requires that each rule which implements a discretionary power include the standards by which the Agency shall exercise power, is not being fulfilled. Further, if these guidelines, which contain the necessary standards and criteria for implementing the rule, are not inserted into the rule, then the Commission's rules does not accurately reflect the actual policy of the Commission. The Joint Committee objects to Rule 10-(7)(A) because (1) rule 10(7)(A) lacks sufficient standards and criteria with which the Commission may determine whether and which applicants must deposit money or securities in escrow, or a surety bond; and (2) the rule does not accurately reflect the actual policy of the Commission.

Date Agency Response Received: November 16, 1981

Nature of Agency Response: Modify

Rule 12-(3), "Workman's Compensation and Occupation Diseases Act" [Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1981

Specific Objections:

Rule 12-(3) states:

Any person, firm or corporation found to have violated the provisions of Subsection (1) above shall be subject to suspension or revocation of their right to appear before the Industrial Commission or to participate in

any way in connection with any matters which may properly come before the Commission. Any employee of the Industrial Commission shall be subject to discipline, including discharge, for violations of Sub-section (2) above.

Subsection (1), the "Anti-Corruption Rule", prohibits the giving of anything of value to any member or employee of the Commission by anyone having an interest in a matter before the Commission. The Commission initially stated that no proceedings have ever been initiated for violation of the anti-corruption rule and if such proceedings were instituted the alleged violator would have an opportunity to respond to the complaint. The Commission also indicated, however, that it does not have statutory authority to enforce violations of the Anti-Corruption Rule.

The Joint Committee objects to Rule 12-(3) of the Industrial Commission's Rules and Regulations Governing Practice Before the Commission under the Workman's Compensation and Occupational diseases Act because the Commission does not have the statutory authority to enforce violations of the Anti-Corruption Rule and because the rule does not reflect the Commission's actual policy.

Date Agency Response Received: November 16, 1981

Nature of Agency Response: Refusal

Law Enforcement Merit Board

Rule 3-2

Initial Publication in Illinois Register: July 11, 1980

Date Second Notice Received: December 23, 1980

Joint Committee Objection: January 22, 1981

Specific Objections:

Proposed Rule 3-2 permits the Director of the Department of Law Enforcement to make special administrative assignments designated by one of the following titles: Assistant Director, Deputy Director, Assistant Deputy Director, Deputy Superintendent, or Special Agent VII.

The Joint Committee objects to these proposed rules because the Merit Board has no statutory authority to propose a rule giving the Director authority to make a special administrative assignment creating the rank of colonel. This objection is based on the Authority granted the Joint Committee pursuant to Section 7.06(a) of the Illinois Administrative Procedure Act.

Date Agency Response Received: February 18, 1981

Nature of Agency Response: Modify

Publication as Adopted in Illinois Register: March 13, 1981

Effective Date: March 2, 1981

Office of Consumer Services

Rule I, "Financial and Technical Assistance" [Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1981

Specific Objections:

Rule I of the Rules and Regulations for applying for Financial and Technical Assistance provides, in part, that a consumer group's application for assistance is first reviewed by the Office of Consumer Service's professional staff which prepares a recommendation for the Office's Director. This rule also states that "the application and recommendation is then sent to the Director for review." Rule I also provides that if an application is approved, the Director will send the applicant a letter containing the formal approval and budget as approved by the Office.

As the rule currently reads, the judging, evaluating and granting of applications for financial and technical assistance lies within the discretion of the Office. The Office stated that it has no specific standards and criteria other than those set forth in the eligibility guidelines for Rule III of the Rules and Regulations for Public Participation. After reviewing the standards and criteria are inadequate.

It appears that the mandate of Section 4.02 of the IAPA, which requires that each rule which implements a discretionary power include the standards by which the Agency shall exercise the power, is not being fulfilled. Therefore, the Joint Committee objects to Rule I because the rule lacks the standards and criteria for the judging, evaluating and granting of, applications for financial and technical assistance.

Date Agency Response Received: December 9, 1981

Nature of Agency Response: Withdrawal

Rules III, Section F, "Financial and Technical Assistance" [Existing]

Basis of Review: Five-Year/Regulation of Occupations

Joint Committee Objection: August 20, 1981

Specific Objections:

Rule III, Section F states, in part:

If a consumer group is selected to receive financial assistance, they will have to abide by provisions of U.S. Office of Management and Budget (OMB), circular A-102. Copies of the circular will be provided to selected applicants by the Office. The only sections of OMB circular A-102 that do not apply to applicants for financial assistance are the applications and reporting requirements which are superceded by the Office of Consumer Services' own requirements.

Section 6.01 of the IAPA provides in part, "if an agency proposes or adopts federal rules or portions thereof, the requirement that the full text thereof be filed shall be satisfied by filing with the applicable notice a photographic or other reproduction of such rules."

As this provision currently reads, any provision or requirements issued by the U.S. Office of Management and Budget in circular A-102 must be followed by all consumer groups which receive assistance from the Office of Consumer Services. When the Office was asked if it had any standards and criteria used in deciding which applicants will be provided with a copy of the circular. When the Office was asked if it had any requirements that supercede sections of OMB circular A-102, the Office stated that it had none. The Office also stated that in the event that circular A-102 were superceded, it would supply the consumer groups with the new requirements.

It appears that Rule III, Section F violates the mandates set forth in Section 6.01 of the IAPA because the Office of Consumer Services has not filed the circular with the Secretary of State. Therefore, the Joint Committee objects because Rule III, Section F has not met the statutory requirements imposed by Section 6.01 of the IAPA.

Date Agency Response Received: December 9, 1981

Nature of Agency Response: Withdrawal

Rule IV, Section B, "Financial and Technical Assistance" [Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1981

Specific Objections:

Rule IV, Section B of the Rules and Regulations for Applying for Financial and Technical Assistance states:

If your application and budget approved and your participation costs are to be reimbursed, a staff member will be assigned as the formal contact person for the Office. That person will be asked to place on file comments on the quality of work as it progresses. The assigned staff member will also be asked to report on their estimation of the appropriateness of your claimed

expenditures in terms of your contribution to the proceeding. If you then apply for reimbursement of participation costs in additional proceedings or for supplemental funding, the Office will consider the quality of your past performance.

As this Rule currently reads, the judgement and determination as to how and to what extent these past performance reports will be utilized by the Office in its determination as to whether further consumer group's applications for reimbursements, participation costs in additional proceedings or for supplemental funding will or will not be granted, lies within the discretion of the Office. The Office has stated that it had no specific standards and criteria other than those set forth in the eligibility guidelines of Rule III of the Rules and Regulations for Public participation. It appears that these standards and criteria are inadequate.

It appears that the mandate of Section 4.02 of the IAPA, which requires that each rule which implements a discretionary power include the standards by which the Agency shall exercise the power, is not being fulfilled. The Joint Committee objects to Rule IV, Section B because the rule lacks the standards and criteria which the Office employs to determine how and to what extent past performance reports of consumer groups will be utilized in the Office's determination as to whether further consumer group's applications for reimbursement, participation costs in additional proceedings or for supplemental funding will or will not be granted.

Date Agency Response Received: December 9, 1981

Nature of Agency Response: Withdrawal

Rule III, "Public Participation" [Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1981

Specific Objections:

Rule III of the Rules and Regulations for Public Participation sets forth eligibility guidelines that consumer groups who wish to participate in proceedings before utility regulatory commissions must meet in order to receive financial or technical assistance. Rule III provides, in part:

No consumer group shall receive financial or technical assistance from the Office unless the consumer group's:

- 1) representation of a consumer interest would substantially contribute to a full and fair determination of the issues to be considered in the proceedings; and
- 2) participation in the proceeding is necessary to the effective representation of the consumer interest.

This rule also states, in part:

No consumer group shall receive financial or technical assistance from the Office unless the consumer interest would not be effectively represented because: 1) the consumer group does not have reasonably available and cannot reasonably obtain sufficient resources to participate effectively in the proceeding; or 2)(a) the economic gain or loss to the consumer group and any consumer with regard to the outcome of the proceedings is small relative to the cost of effective participation in the proceeding; and (2)(b) the costs of effective participation are small relative to the social, economic or environmental consequences of the outcome of the proceeding.

As this rule currently reads, the judgment and determination of whether a consumer group's application will or will not be approved, lies within the discretion of the Office. The Office stated that it has no specific standards and criteria other than those listed in Rule III.

The terminology used in Rule III (i.e. "reasonably," "cannot reasonably obtain sufficient resources," "costs... are small relative cost...") gives little guidance and fails to set any identifiable standards or guidelines for the agency's discretion. Therefore, it appears that the mandate of Section 4.02 of the IAPA, which requires that each rule which implements a discretionary power include the standards by which the agency shall exercise the power, is not being fulfilled. The language contained in Rule III is vague and general, and renders the rule useless and inadequate for making any type of substantive determination. The Joint Committee objects to Rule III because the rule lacks sufficient standards and criteria for judging and evaluating consumer group applications.

Date Agency Response Received: December 9, 1981

Nature of Agency Response: Withdrawal

Rule VI, Section 2, "Public Participation" [Existing]

Basis of Review: Five-Year/Labor Laws and Consumer Protection

Joint Committee Objection: August 20, 1981

Specific Objections:

Rule VI, Section 2 states, in part, that "approval of applications to represent consumers as a general class may be given, but as a policy the Office will give preference to applicants who define their interest or point of view with greater specificity."

As this rule currently reads, the judgement and determination of when and how the Office of Consumer Services will give preference to applicants who define their interest or viewpoints with greater specificity, lies within the discretion of the Office. The Office has stated that it has no specific standards and criteria other than those set forth in the eligibility

guidelines of Rule III. These standards and criteria appear inadequate and an objection to the Rule has been issued.

It appears that the mandate of Section 4.02 of the IAPA, which requires that each rule which implements a discretionary power include the standards by which the Agency shall exercise the power, is not being fulfilled. The Joint Committee object to Rule VI, Section 2 because the rule lacks sufficient standards and criteria for determining when performance will be given to applicants who define their interest or viewpoints with greater specificity.

Date Agency Response Received: December 9, 1981

Nature of Agency Response: Withdrawal

State Board of Education

"Certification Bulletin" [Existing]

Basis of Review: Complaint

Joint Committee Objection: November 17, 1981

Specific Objections:

The final paragraph of the State Board's July 1981 "Certification Bulletin" reads thus:

Students with foreign teaching credentials should be advised to apply through transcript evaluation: the Certification and Placement Section has a contractual arrangement with an outside source to provide such evaluations.

Section 3.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat., ch. 127, par. 1003.09) defines "rule" as "each statement of general applicability that implements, applies, interprets, or prescribes law or policy," with four exceptions not applicable here. The State Board's language quoted above fits this definition, and because it was never adopted as a rule pursuant to Section 5.01 of the Illinois Administrative Procedure Act, the Joint Committee objects.

The other basis for the Joint Committee's objection is the fact that Article 21 of the School Code, which governs the certification of teachers, is silent on the subject of applicants educated in foreign countries. There is therefore no statutory authority for this rule.

Date Agency Response Received: Pending

Nature of Agency Response: Pending

Rule 12.05, "Rules and Regulations to Govern the Certification of Teachers."
[Existing]

Basis of Review: Complaint

Joint Committee Objection: November 17, 1981

Specific Objections:

Rule 12.05 of the Rules and Regulations to Govern the Certification of Teachers provides that applicants who complete a program approved by the National Council for the Accreditation of Teacher Education (NCATE) "May be certified for the type of certificate recommended...." NCATE is a private organization.

Section 21-11.1 of the School Code (Ill. Rev. Stat., ch. 122, par. 21-11.1) provides that out-of-state applicants who meet certain conditions are eligible for Illinois certification; among these conditions is eligibility for a similar teacher's certificate in a state with requirements substantially equal to those of Illinois.

The same statute places responsibility for prescribing rules "establishing the similarity of certificates in other states and the standards for determining the equivalence of requirements" on the State Board. The Joint Committee objects to rule 12.05 because it delegates the power to pass upon out-of-state teacher education programs to NCATE, and there is no statutory authority for such a delegation.

Date Agency Response Received: Pending

Nature of Agency Response: Pending

Rules 12.05, 12.21, "Rules and Regulations to Govern the Certification of Teachers."
[Existing]

Basis of Review: Complaint

Joint Committee Objection: November 17, 1981

Specific Objections:

Rules 12.05 and 12.21 of the Rules and Regulations to Govern the Certification of Teachers from the basis of the State Board of Education policy for certification of out-of-state applicants. It is the Board's policy to consider out-of-state applicants for certification if they graduate from an institution approved by the National Council for the Accreditation of Teacher Education (NCATE) or if they are certified to teach in another state. The effect of this policy is to require out-of-state applicants graduating from institutions not approved by NCATE to apply for and receive certification in the state in which they attended college before being considered for Illinois certification.

Section 21-11.1 of the School Code (Ill. Rev. Stat. ch. 122, par. 21-11.1) states that applicants who hold or who are "eligible to hold a teacher's certificate or license under the laws of another state...may be granted a corresponding teacher's certificate in Illinois" if certain conditions are met. There is thus a class of persons "eligible to hold" another state's certificate who are, under current Board policy, required to become certified or licensed in another state as a condition precedent to consideration for Illinois licensure. The Joint Committee objects to the

State Board policy embodied in Rules 12.05 and 12.21 because it conflicts with School Code Section 21-11.1.

Date Agency Response Received: Pending

Nature of Agency Response: Pending

Rule 12.21, "Rules and Regulations to Govern the Certification of Teachers."
[Existing]

Basis of Review: Complaint

Joint Committee Objection: November 17, 1981

Specific Objections:

Rule 12.21 of the Rules and Regulations to Govern the Certification of Teachers provides that out-of-state applicants who complete a program which is approved by the state in which the institution offering the program lies "shall be evaluated in accordance with Illinois certification requirements." State Board of Education representatives stated at a conference held on September 11, 1981, that evaluators check the transcripts of out-of-state applicants for a one-to-one correspondence of credit hours completed at the out-of-state institution with coursework required of applicants graduating from Illinois institutions. The representatives also stated that if an out-of-state institution is reorganized by the state in which it lies, credits earned at that institution are automatically applied toward Illinois coursework requirements. In other words, there is no independent analysis of the other state's standards for accrediting its teacher training institutions.

Section 21-II.1 of the School Code (Ill. Rev. Stat., ch. 122, par 21-II.1) sets several conditions for eligibility of out-of-state applicants for Illinois certification. Among these is the requirement that the applicant is certified or eligible for certification in another state and "(t)hat the requirements for a similar teacher's certification in the particular state...were...substantially equal to the requirements in force at the time the application is made for the certification in this state."

Rule 12.21 and State Board policy does not fulfill the statutory mandate for two reasons. First, the State Board's requirement of one-to-one correspondence between credits completed at the out-of-state institution and Illinois credit requirements is more stringent than "substantially equal" - the standard contained in the statute. Second, the lack of any mechanism or policy to check the accreditation practices of the other states means that the State Board does not determine whether the quality of out-of-state teacher education is "substantially equal" to Illinois teacher education. The Joint Committee objects to Rule 12.21 because it does not comply with School Code Section 21-11.1.

Date Agency Response Received: Pending

Nature of Agency Response: Pending

Amendments to the Rules and Regulations to Govern the Administration and Operation of Special Education

Initial Publication in Illinois Register: December 5, 1980

Date Second Notice Received: January 20, 1981

Joint Committee Objection: February 27, 1981

Specific Objections:

1. Proposed rules 8.05 and 8.07-2(2). These proposed rules concern the responsibility for payment of costs for special education, related services, and room and board. The Joint Committee objected to these proposed rules because they fail to clearly state that the primary responsibility for room and board is on the State Board of Education and not the local school districts, in accordance with Article 14, Sections 7.02 (eighth paragraph) and 8.01 (fifth paragraph) of the School Code. The specific language upon which this objection is based is contained in both of these Sections and reads as follows:

Room and board costs not provided by a state agency other than the State Board of Education shall be provided by the State Board of Education on a current basis.

2. Proposed rule 8.05 (4). This proposed rule authorizes the State Board of Education to disapprove individual residential placements of children in need of special education. The Joint committee objected to this proposed rule because neither Article 14, Section 8.01 of the School Code, nor Title 45 of the Code of Federal Regulations gives the State Board of Education the authority to review the individual placement of each child provided with special education services. Rather, the State Board of Education is only authorized to promulgate rules and regulations as to how local school districts do their local individual review of each child that the local district is providing with special education services.

Date Agency Response Received: June 2, 1981

Nature of Agency Response: Modify/Withdraw

Publication as Adopted in Illinois Register: November 6, 1981

Effective Date: October 27, 1981

Illinois Board of Higher Education

Guidelines for Administration of the Illinois Financial Assistance Act [Emergency Amendment]

Publication in Illinois Register: January 23, 1981

Effective Date: January 13, 1981

Joint Committee Objection: February 27, 1981

Specific Objections:

This rulemaking is an improper use of the emergency rulemaking process for two reasons. First, there did not exist a sufficient "threat to the public interest, safety, or welfare," as required by Section 5.02 of the Illinois Administrative Procedure Act. Second, to the extent there may have been an emergency, that emergency was entirely the result of the Board's failure to promulgate this rulemaking in a reasonably expeditious manner.

Date Agency Response Received: None

Nature of Agency Response: Refuse

Statewide Health Coordinating Council

Section 7.1 of the Illinois Health Planning Guidance Document [Emergency]

Publication in Illinois Register: April 10, 1981

Effective Date: March 30, 1981

Joint Committee Objections: May 13, 1981

Specific Objections:

This emergency rulemaking establishes guidelines by which Health Systems Agencies are to develop Health Systems Plans. The Plans of the eleven agencies will then be combined to form the State Health Plan as required by the Department of Health and Human Services. This emergency rulemaking is designed to assure some uniformity in the Health Systems Plans to better enable the Council to develop the State Health Plan.

The Joint Committee objects to this use of emergency rulemaking because any emergency which may exist is solely the result of the Council's failure to promulgate this rulemaking in a reasonably expeditious manner.

Date Agency Response Received: June 17, 1981

Nature of Agency Response: Refusal

STATEMENTS OF RECOMMENDATION

Code Departments

Department of Human Rights

Guidelines on Discrimination in Employment

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

The Illinois Administrative Procedure Act Defines "rule" as "each agency statement of general applicability that implements, applies, interprets, or prescribes law of policy..." (Ill. Rev. Stat. 1979, ch. 127, par. 1003.09). The FEPC, in 1976, published a pamphlet entitled "Guidelines on Discrimination in Employment under the Fair Employment Practices Act." These "guidelines" included the Commission's interpretation of certain key statutory provisions relating to sex discrimination, discrimination because of handicaps unrelated to ability, inquiries into arrest or conviction records, and religious discrimination. For example, Section 3.2(c) of the "Guidelines" defines "physical or mental handicap unrelated to ability" as "any handicap...which, with reasonable accomodation, does not prevent performance of the essential functions of the job in question." These "guidelines" clearly come within the IAPA definition of "rule" and should therefore be promulgated as rules in accordance with Section 5.01 of the Act (Ill. Rev. Stat. 1979, ch. 127, par. 1005.01).

Failure to promulgate these "guidelines" as rules in accordance with the IAPA may create an opportunity for challenging the validity of the policies contained therein under Section 4(c) of the IAPA, which provides that "no agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act" (Ill. Rev. Stat. 1979, ch. 127, par. 1004(c)).

The Joint Committee recommends that the Department of Human Rights promulgate rules which reflect the interpretive guidelines previously published by the Fair Employment Practices Commission.

Date Agency Response Received: November 17, 1981

Nature of Agency Response: Will initiate rulemaking

Department of Labor

Unemployment Insurance: Reciprocal Coverage

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 2700 of the Illinois Unemployment Insurance Act authorizes the state to enter into reciprocal arrangements with other states, the federal government, and Canada with regard to unemployment insurance coverage, the payment of benefits, the collection of contributions, and the combining of an individual's wages and employment from different localities. Two current regulations of the Department are related to this section.

Regulation 20 sets forth requirements for the payment of interstate benefits and Regulation 29 sets forth requirements for elections of coverage by employers for multi-state workers as part of the "Interstate Reciprocal Coverage Arrangement." These regulations set forth some useful information, but are not complete.

BSB No. 1219 and BSB No. 831 contain information about a Consolidated Interstate Plan for Combining Wages and an Extended Interstate Plan for combining Wages. CSB No. 200 explains requirements under the Interstate Maritime Reciprocal Arrangement. CSB No. 121 and CSB No. 103 both contain information about the Interstate Reciprocal Coverage Arrangement.

Some of the Information contained in these bulletins may be obsolete. But some of it contains policy, especially that which applies directly to claimants or employers, which is appropriate for rulemaking. This information should provide a foundation upon which a more complete explanation of reciprocal arrangements can be incorporated in the rules.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Disclosure of Claimant Information to Employers

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 1900 of the Act provides that employing units may be furnished with such information, as may be deemed proper within the discretion of the Director, as is necessary to enable it to fully discharge its obligations or safeguard its rights under this Act. Rules by which to guide the Director's exercise of his discretion to disclose confidential information would be appropriate and would inform employers as to what types of information could be made available to them. Regulation 31 deals generally with the disclosure of information but does not include policies regarding the kinds of information available to employers. Such policies are found in ASB No. 111.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Disclosure of Claimant Information to Public Agencies

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 1900 of the Act provides that the Director shall or may as he deems proper furnish certain information to various public agencies or

officers. Regulation 31, which deals with the disclosure of information to such agencies does not deal with the method of agency inquiry or with information to be made available to CETA prime sponsors or subcontractors. Rule-like policies with respect to both of these subjects are found in ASB No. 111, BSB Nos. 1299 and 1312, and AB No. 692, Sup. No. 5. These policies should be embodied in rules.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Disclosure of General Labor Market Information

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 1900 of the Act authorizes the Director to publish or release general labor market information and to furnish such information as he may deem proper to such individual or public officer or agency as he may by regulation prescribe. Regulation 31 provides generally for the disclosure of general labor market information but does not deal with the method by which to obtain prevailing wage information or the types of information which can be obtained from the Wage Rate Service. AB No. 602 contains "regulations" concerning these subjects which should properly be embodied in rules.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Definition of "Employing Unit"

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 204 of the Illinois Unemployment Insurance Act defines the term "employing unit" as used pursuant to the Act. The Department has no rules further defining or interpreting this term. However, the Department's Digest of Interpretations, number 1000 through 1499, contains interpretations of the statutory definition of "employing unit" which explain the various types of establishments which are employing units, some details about employing unit responsibilities under the Act, the duration of an employing unit's existence, and ways in which true ownership of an employing unit is determined. This type of policy information would be useful in rules, particularly for new establishments which could be potential employing units.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking, but seems to disagree about the scope of the necessary rulemaking.

Unemployment Insurance: Definition of "Employer"

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 205 of the Illinois Unemployment Insurance Act defines "employer" as the term is used pursuant to the Act. Generally, an "employer" is an "employing unit" which is liable under the Act. The Department does not discuss the meaning of "employer" in its rules and regulations. The Department's Digest of Interpretations (DOI), however, does expand upon and interpret this definition.

DOI Nos. 1500 through 1999 provide explanations relating to determining employer status and liability. DOI Nos. 2000 through 2499 contain policy concerning how "employer" status is transferred from a predecessor employer to a successor employer. DOI Nos. 2500 through 2999 explain how transfers of assets affect "employer" status. DOI numbers 3000 through 3499 explain the meaning of "tacking" and how it applies to the transfer of "employer" status and experience. DOI Nos. 4000 through 4499 discuss Department policy concerning continuity of employer status and liability.

This material, while containing specific examples which would not need to be included in rules, sets forth general principles and policies in the areas mentioned above which should be embodied in rules.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Definition of "Employment"

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

"Employment" is defined by the Illinois Unemployment Insurance Act in a series of its sections. These sections of the Act not only define "employment" generally, but also address "employment" as it applies to specific areas or situations, involving such things as where employment is performed, services which are or are not "employment," "employees" of "employees," agricultural labor, aeronautical and maritime labor, domestic services, real estate salesmen, employment of family members, employment outside of Illinois, government employment, non-profit employers, services covered by federal unemployment compensation, student workers, insurance agents and solicitors, and services by directors of corporations.

The Department has developed in its Digest of Interpretations expanded policies and interpretations for a variety of these sections of the Act.

These are Sections 206, 207, 208, 209, 210, 212, 213, 214, 215, 216, 217, 218, 219, 221, 223, 225, 226, 227, 228, 230, 232, and 233. All of these sections of the Act help explain the meaning of "employment." The part of the Digest of Interpretations which apply to these sections are found in DOI Nos. 4700 through 17,699. While setting forth many specific applications which would not need to be included in rules, these pages of the Digest also contain general interpretations and principles concerning the above mentioned sections of the Act which are appropriate for rulemaking.

Date Agency response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking

Unemployment Insurance: Definition of "Wages"

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Sections 234 and 235 of the Illinois Unemployment Insurance Act explain and define what constitutes "wages" under the Act. The Department has developed interpretations of these sections, appropriate for rulemaking, which address when credit, expenses, damages including back pay, union payments and benefits, payments in lieu of notice, premiums and stocks, sick pay, vacation pay, prizes, retirement pay, advances, and gifts are considered to be "wages" covered by the Act. These policies and interpretations are found in TPU 460.25, TPU 460.3, TPU 460.35, TPU 460.45, TPU 460.65 and DOI Nos. 17,700 through 18,899.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking, but indicates that some of the cited policy statements are obsolete.

Unemployment Insurance: Treatment of Wages Not Paid

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 405 of the Act provides:

The Director may, for the purpose of determining benefit rights of a claimant, treat wages payable but unpaid as wages paid, where such wages are not paid, where such wages are not paid because of the insolvency, bankruptcy, or other financial difficulty of the employer.

This provision is not implemented by rules or any other formal policy statement identified by the staff. A claimant should be able to determine the circumstances in which the Director will treat his wages not paid due to the insolvency or other financial difficulty of the employer as wages for the purpose of determining his benefit rights. Rulemaking is appropriate.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Elections of Coverage by Employers

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 302 of the Illinois Unemployment Insurance Act provides that employing units not otherwise subject to Act may elect to become a liable "employer" under the Act. No regulation of the Department's addresses this subject with regard to standard coverage under the Act, although Regulation 29 does set forth requirements relating to elections of coverage for multi-state workers.

However, DOI Nos. 20,700 through 20,999 contain interpretations of Section 302 of the Act which discuss who may or may not elect coverage, the filing and withdrawal of valid applications for election, standards for approving such elections, the responsibilities and liability of employers who elect coverage, and the acceptance of retroactive applications for election. The general principles and interpretations set forth in this part of the Digest are appropriate for rulemaking.

Date of Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking, but believes that most of the cited policy statements are obsolete.

Unemployment Insurance: Employers Liable Due to Concurrent Federal Liability

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 245 of the Illinois Unemployment Insurance Act states that any employing unit which is an "employer" under the Federal Unemployment Insurance Act shall be an "employer" under the Illinois Law as well. Section 231 of the Illinois Unemployment Insurance Act provides that employing units liable solely because of Section 245 may choose to have its Illinois workers covered under this unemployment compensation law of another state instead. The Director must approve such actions. There are no Department regulations relating to this.

DOI No. 16,930 expands upon Section 231 by providing for a retroactive waiver of Illinois coverage for certain employing units which have chosen to be covered under the laws of another state. This is policy appropriate for rulemaking.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will consider initiating rulemaking.

Unemployment Insurance: Notices for Elections and Termination of Elections

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 1404 A 6 of the Act provides that:

Written elections to make payments in lieu of contributions and written notices of termination of election shall be filed in such form and shall contain such information as the Director may prescribe.

The Joint Committee identifies no rule, regulation, or other formal statement of policy prescribing the forms and information required. This provision is appropriate for implementation by rulemaking.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Non-profit Organizations' Group Accounts

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 1404 E of the Act permits two or more non-profit organizations who have elected to make payments lieu of contributions to file a joint application for the establishment of a group account. The application is to be filed in such form and contain such information as the Director may prescribe. Nor rule, regulation, or other formal statement of policy implements this provision. Rulemaking would be appropriate.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking

Unemployment Insurance: Criteria for Approval of Group Accounts

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 1404 E. of the Act requires the Director to establish a group account by order upon his approval of a joint application. No criteria for approval of the application are set up in the Act or in the Rules and Regulations. Non-profit organizations deserve to know the bases on which their applications are judged. Rulemaking would be an appropriate way for the Department to establish those criteria.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Conditions for Maintenance and Termination of Group Accounts

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 1404 E of the Act provides that:

the Director shall by regulation prescribe the conditions for establishment, maintenance and termination of group accounts, and for addition of new members to and withdrawal of active members from such accounts.

No regulations implementing this provision exist. Rulemaking is required.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Termination of Coverage for Employers

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 301 of the Illinois Unemployment Insurance Act provides that an employing unit shall cease to be an employer only upon written application to the Director, and even then only under certain conditions. The Department has no regulations concerning such termination. The Department, however, has set forth policy and interpretations concerning this Section 301 in its Digest of Interpretations.

DOI Nos. 20,400 through 20,699 explain among other things the times and manner in which application for termination of coverage can be made, the termination of coverage for successor employers made liable by election, the basis upon which automatic terminations are made, and the withdrawal of applications for termination of coverage. The general principles and interpretations contained in this information are appropriate for rulemaking.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Penalties for Employers' Failure to File Wage Reports

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 1402 of the Illinois Unemployment Insurance Act provides that a penalty be assessed against liable employers which fail to file reports of wages paid to each of its workers within the specified time limits. Regulation 12 of the Department's rules and regulations also addresses this subject, as do DOI Nos. 21,600 through 21,899. In this instance, information contained in the Digest corresponds with that in the regulations, with one exception. DOI Nos. 21,740 contains information, not contained in Regulation 12, about how penalties are assessed against employers liable only because of Section 245 of the Act. This information is appropriate for rulemaking.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Refuses to initiate rulemaking because cited policy statement is obsolete.

Unemployment Insurance: Standards for Sufficiency of Wage Reports

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 1402 of the Illinois Unemployment Insurance Act states that if the Director shall deem any report of wages paid to each worker of any employer insufficient, he shall notify such employer to file a sufficient report. No regulation of the Department addresses this subject, nor has any reference to the sufficiency of wage reports been found in any of the policy bulletins or in the Manual of Benefit Precedent Decisions.

Clearly, this determination of sufficiency is an exercise of discretion by the Director, and as such should be subject to standards and criteria governing the exercise of that discretion. It is therefore recommended that the Department promulgate rules to provide standards and criteria for determining the sufficiency of reports of wages paid to each worker.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Criteria for Requiring Delinquent Employers to Report Monthly

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 1400 of the Illinois Unemployment Insurance Act provides that "any employer who is delinquent in filing a contribution report or in paying his contribution for any calendar quarter may, at the discretion of the Director, be required to report and to pay contributions on a calendar month basis." The Department has no regulations, nor policy bulletins, which address this discretionary power of the Director's.

As a discretionary power, determining when contribution reports and payments will be required on a calendar month basis should be guided by standards and criteria. Such standards and criteria would be appropriate for rulemaking.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Information Required of State Agencies

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 1403 of the Illinois Unemployment Insurance Act provides for the financing of benefits paid to state employees. As a part of this, Section 1403 states that:

Every department, institution, agency and instrumentality of the State of Illinois shall make available to any individual who has performed insured work for it as the Director may find practicable and necessary for the determination of such individual's rights under this Act. Each such department, institution, agency and instrumentality shall file such reports with the Director as he may by regulation prescribe.

The Department has no regulations concerning this, although benefits are surely being paid to unemployed state employees. If benefits are being paid to unemployed state employees, information concerning such employees would no doubt be required as well. No evidence of this, however, has been found in either the regulations or in the policy bulletins. If any such information or reports are actually required, then an explanation of such is appropriate for rulemaking.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Refuses to initiate rulemaking because information required of state agencies is the same as information required of private employers.

Unemployment Insurance: Reports by Non-contributing Employing Units

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 1800 of the Illinois Unemployment Insurance Act provides among other things that

Each employing unit which has paid no contributions for employment in any calendar year shall, prior to January 30 of the succeeding calendar year file with the Director on forms to be furnished by the Director at the request of such employing unit, a report of its employment experience for such periods as the Director shall designate on such forms, together with such other information as the Director shall require on such forms, for the purpose of determining the liability of such employing unit for the payment of contributions.

Regulation 7 of the Department of Labor's unemployment insurance rules partially implements this provision of the Act. Regulation 7 requires employing units commencing business to file a "Report to Determine Liability." While this provision covers some employing units (those commencing business), it does not cover employing units which have been in operation for longer periods of time. Reporting requirements for determining the liability of existing employing units would be policy appropriate for rulemaking.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will consider initiating rulemaking.

Unemployment Insurance: Furnishing of Benefit Wages Statements to Employers

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 1508 of the Illinois Unemployment Insurance Act states in part that the Director "shall periodically furnish each employer with a statement of the wages of his workers or former workers which became benefit wages together with the names of such workers and former workers, and any such statement, in absence of an application for revision thereof within 30 days from the date of mailing of such statement to his last known address, shall be conclusive and final upon the employer for all purposes and in all proceedings what soever."

No Department regulation sets forth when and how statements of benefit wages are to be made, although Regulation 302 discusses how application for revision of such statements is made. Because of the importance and possible finality of statements of benefit wages, rulemaking setting forth the times and manner in which such statements are made would be appropriate.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will consider initiating rulemaking.

Unemployment Insurance: Notices of Rate Determinations to Employers

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 1509 of the Illinois Unemployment Insurance Act states that the "Director shall promptly notify each employer of his rate of contribution for each calendar year by mailing notice thereof to his last known address." The Department has no rule explaining how or when notices of contribution rates are given to employers, though Regulation 303 describes how application for review of such a rate determination can be made.

The way in which contribution rates are determined is discussed elsewhere in the Act and the rules. The way in which application is made for review of rate determinations is discussed in Regulation 303. But in no regulation is the manner revealed in which notices of rate determination are given, nor is any indication given of when such notice must be given "promptly" or otherwise.

How and when notices of employers' contribution rates are given would be appropriate for rulemaking.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will consider initiating rulemaking.

Unemployment Insurance: Criteria for Inspections of Employers' Books and Records

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 1800 of the Illinois Unemployment Insurance Act states in part that

Such records (of an employing unit) together with such other books and documents as may be necessary to verify the entries in such records shall be open to inspection by the Director or his authorized representative at any reasonable time as often as may be necessary.

Neither the Act nor the Department's rules and regulations have set forth the reasons why or circumstances under which such inspections can be made. Also, neither the Act nor the rules and regulations have set forth the procedures by which such inspections are actually performed.

Based on the case law concerning administrative searches and inspections, and in view of the fact Section 1805 limits the right to inspect the records, books, and documents of employing unit's only in that such inspections be performed at any "reasonable" time, rulemaking setting forth the reasons why and procedures by which such inspections are made would appear to be appropriate.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will consider initiating rulemaking

Unemployment Insurance: Procedures for Entering Employers' Premises

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 1800 of the Illinois Unemployment Insurance Act states in part that

Every employer who is delinquent in the payment of contributions shall also permit the Director or his representative to enter upon his premises, inspect his books and records, and inventory his personal property and rights thereto, for the purpose of ascertaining and listing the personal property owned by such employer which is subject to the lien created by this Act in favor of the Director of Labor.

While the reason why such entries, inspections, and inventories may be made is given, the Act provides no guidelines or procedures by which such entries, inspections, and inventories are actually performed. The Department has made no rules or regulations setting forth such guidelines or procedures.

In Marshall v. Barlow's Inc. (436 U.S. 3078, 56 L.E.d.2d 305, 98 S.Ct. 1816 (1978)) the Supreme Court of the United States held that Section 8(a) of the Occupational Safety and Health Act of 1970, (29 U.S.C.A. Section 677 (a)), which empowers agents of the Secretary of Labor to search the work area of any employment facility within the Act's jurisdiction to inspect for safety hazards and regulatory violations, violated the Fourth Amendment to the U.S. Constitution because it authorized inspections without a warrant or its equivalent. The Secretary of Labor was not prohibited, however, from exercising the inspection authority conferred by Section 8(a) pursuant to regulations and judicial process satisfying the Fourth Amendment. Several other cases before the Supreme Court have also been concerned with administrative searches or inspections, including Camara v. Municipal Court (387 U.S. 523, 18 L.E.d.2d 930, 87 S.Ct. 1727 (1967)) and See v. Seattle (387 U.S. 541, 18 L.Ed. 2d 943, 87 S.Ct. 1727 (1967)).

Since the Illinois Unemployment Insurance Act places no limits upon the right to enter an employer's premises, and in view of the above-mentioned case law, it would appear that rulemaking by the Department setting forth inspection procedures and related privacy guarantees would be appropriate.

Date Agency Response Received; December 4, 1981

Nature of Agency Response: Will consider initiating rulemaking.

Unemployment Insurance: Criteria for Assessing Liability of Deceased Persons

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 2200 of the Illinois Unemployment Insurance Act states:

If the employing unit or person incurring any such (contribution) liability has died, such assessment may at the discretion of the Director be made against his personal representative.

The Department has no rule or policy bulletin concerning this provision.

Clearly, this provision grants the Director a discretionary power. If such assessments against personal representatives are never, (or always), made, this would be a policy developed in the discretion of the Director and would be appropriate for rulemaking. If such assessments are only sometimes made, the standards and criteria by which such an assessment decision is reached would be appropriate for rulemaking.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Criteria for Withdrawal of Notices of Lien Against Employers

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 2400 of the Illinois Unemployment Act creates a lien in favor of the Director upon all property of any employer from whom contributions, interest, or penalties are or may become due. Such a lien shall attach to such property at the time such contributions, interest, or penalties become due, and in the amount of such contributions, interest, or penalties.

Section 2401 A of the Act states that such liens are invalid unless notice of the lien is filed by the Director in the office of the Recorder of Deeds of the county within which the property on question is situated. Section 2401 (2) also states that:

The Director may, in his discretion, for good cause shown, issue a certificate of withdrawal of notice of lien filed against any employer....

The Department has no rules or policy bulletins relating to the issuance of certificates of withdrawal of notice of lien.

The Department's definition of "good cause" in this instance, and the standards and criteria by which it is decided to issue certificates of withdrawal of notice of lien, are appropriate for rulemaking.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Reduction of Benefit Amount Due to Receipt of Bonuses

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 402 of the Act provides for the reduction of the weekly benefit amount for a given week in an amount equal to the amount of wages in excess of seven dollars payable with respect to that week. This provision does not, on its face, seem to require rulemaking in order to implement it. However, the Department does have a stated policy regarding the period to which bonuses may be assigned for the purpose of reduction of the weekly benefit amount (TPU 460.15). This type of policy should be embodied in a rule.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will consider initiating rulemaking.

Unemployment Insurance: Criteria for Setting Weekly Benefit Amount for Part-Time Workers

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 407 of the Act provides that:

The Director may, in his discretion...prescribe fair and reasonable general rules applicable to part-time workers for determining their their weekly benefit amount and their total wages in insured work required to qualify such workers for benefits.

The Department has promulgated no such rules, and no other formal statements of policy concerning this subject were identified by the Joint Committee. Rulemaking would be appropriate and in keeping with legislative intent.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Definition of "Unemployment Individual"

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 239 of the Act declares that an individual is to be deemed unemployed in any week of less full-time work if the wages payable to him with respect to such week less than his weekly benefit amount. AA 415.3 contains policy regarding the possible unemployed status of salesmen, brokers, agents, and others who sell goods for others on a commission basis. Such interpretation fits the IAPA definition of rule and should be adopted as such.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will consider initiating rulemaking.

Unemployment Insurance: Registration and Reporting of Work Requirements

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 500 of the Act sets forth requirements which must be satisfied by an unemployed individual in order to qualify for benefits with respect to a given week. Subsection 500 A provides that the individual must have registered for work "at" and continued to report "at" an employment office

in accordance with such regulations as the Director may prescribe. The Director is authorized to waive or alter these requirements where compliance with them would be oppressive or inconsistent with the purpose of the Act. This section is implemented by Regulations 17 and 28 and further implemented by other statements of general applicability found in the policy bulletins. Through the policy bulletins the Department has set up procedures requiring claimant reporting to be done by mail rather than in person (BSB's No. 1307, 1319), requirements for weekly interviews for unemployed persons in shortage occupations (ASB no. 579), and standards for inclusion of union locals on a list of unions whose placement services can help its members meet registration and search for work requirements. The Director has explicit and specific authority to prescribe regulations regarding registration and reporting. Policies implementing this provision should be embodied in rules.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Definition of "Able Work"

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 500 C of the Act provides that an individual shall be eligible for benefits, with respect to a given week only if he is able to work during that week. "Able to work" is a broad term left undefined by the legislature, and no rule sets forth criteria on which to base the determination as to an individual's ability to work. however, a definition of "ability to work" is included in the Precedent Manual (AA 5.05, AA 235.05), as are various policies, presumptions, and guidelines used in making the "ability to work" determination in general (AA 235.05) and when questions arise concerning the following physical conditions: . . . [Extended list of references deleted.]

Such interpretations of "able to work" are rules and should be adopted as such.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking, but seems to disagree about the scope of the necessary rulemaking.

Unemployment Insurance: Definition of "Available for Work"

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 500 C of the Act provides that an individual shall be eligible for benefits with respect to a given week only if he is available for work during that week. "Available for Work" is a broad term of necessity left undefined by the legislature. No formally adopted rule interprets the provision, but most of the Able and Available volume of the Precedent Manual is devoted to the description of standards, factors, considerations,

and other rules used in making the availability determination. Some of these rules are very general while others describe the requirements of availability or unavailability in more specific types of situations. Often they describe the types of evidence that will raise an issue or a presumption and state what is required to rebut the presumption. Availability is defined must place no undue restrictions on the type of conditions he will accept, his personal circumstances must be such as to allow him to take a job, and he must be actively seeking work (AA 5.05). [Footnote deleted.] Policies regarding the meaning of suitable work in terms of experience and training, work outside the customary occupation, the risk to morals, risks to safety and health, and prevailing working conditions are found in AA 195.05, 315.05, 515.5, 515.65, and 515.55, respectively. Also found are "rules" regarding the effect on availability of various personal circumstances in these areas . . . [Extended list of references deleted.]

A large part of the Department's written policy is concerned with the effect on availability of a claimant's restrictions on the type of work he will accept. Types of restrictions for which "rules" exist includes: . . . [Extended list of references deleted.]

The Department also has policies regarding the definition of undue restrictions, burdens of proof and presumptions as to availability in general, the establishment of a prima facie case, and the weight and sufficiency of medical evidence (AA 190.05, 190.1, 190.15). The policies described above should be embodied in rules.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking, but seems to disagree about the scope of the necessary rulemaking.

Unemployment Insurance: Unavailability of less than One Full Day

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 500 C 1 of the Act provides that an otherwise eligible individual unable or unavailable on a normal workday is eligible for benefits for the week is reduced by one-fifth of his weekly benefit amount per day of inability or unavailability. Pursuant to Section 500 C 2, an individual is considered unavailable for work on holidays if his failure to work on that day is as a result of the holiday, and his benefits are reduced in an amount equal to one-fifth of his weekly benefit amount per holiday during the week. The Department has developed "rules" applying these sections to situations in which workers are found unavailable for part of a holiday when the holiday is not the reason for the failure to work or for part of a working day (AA 350.05). These types of policies could be appropriately adopted as rules.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Availability of Worker in Less Favorable Locality

Joint Committee recommendation: August 20, 1981

Specific Recommendation:

Section 500 C 3 of the Act provides that:

An individual shall be deemed unavailable for work if, after his separation from his most recent employing unit, he has removed himself to and remains in a locality where opportunities for work are substantially less favorable than those in the locality he has left.

The Department has adopted no rule containing criteria for deciding whether or not work opportunities are substantially less favorable (AA 150.05, 150.15-4, 6, 15, 16; ASB No. 20). The Department also has policy regarding the availability of a worker who moves to another locality due to domestic circumstances (AA 155.2) and regarding distinctions in the type of evidence sought in removal contents depending on whether or not the employer is a party. (ASB No. 70) These policies of general applicability should be embodied in formal rules.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Attendance at Approved Training Courses

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 500 C 5 of the Act provides that an individual shall not be deemed unavailable because of his regular attendance at an approved training course. The Director is authorized to approve such a course for an individual only if five conditions are met including the condition that "reasonable work opportunities for which the individual is fitted by training and experience do not exist in his locality (emphasis added)." However, the Department has found it necessary to make certain statements of policy in order to implement this section. ASB Nos. 92 and 107 deal with the enrollee's availability during periods of vacation or shutdown of the school. Another statement of policy construes Section 500 C 5 as authorizing approval of a training course for an individual if reasonable work opportunities "are limited or do not exist in his locality (emphasis in original)" (AA 40.05). These statements of policy should be formalized as such.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Standards for Active Search for Work

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 500 C of the Act provides that an individual shall be eligible for benefits with respect to a given week if he was actively seeking work during that week. The term "actively seeking" is not defined in the Act, and the Department has adopted no rule embodying the standards by which to judge a search for work as active. The question of what constitutes an active search work is important to the administration of the act and to interested members of the public. The Department has developed policies interpreting the active search for work requirement covering subjects including:...

[Extended list of references deleted.]

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking, but seems to disagree about the scope of the necessary rulemaking.

Unemployment Insurance: Claims from Public Aid Recipients

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 500 E of the Act sets the amount of base period wages required to qualify for unemployment insurance benefits. The Department has a policy that it will not take a claim from a person not in the armed forces and not employed in the last two years, but it will take the claim if the person has applied for or is receiving public aid (BSB No. 1288). This type of policy should be embodied in a rule.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Leaving Work Voluntarily without Good Cause

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 601 of the Act provides for an individual's ineligibility for benefits during a specified period of time after he leaves work "voluntarily without good cause." What constitutes "good cause" is clearly a question which should be answered by reference to clear, published standards and criteria. What is meant by leaving work "voluntarily" is also open to interpretation. The Department has recognized the need to list standards, considerations, and factors in order to facilitate consistent application of Section 601. They found, for the most part, in Voluntarily Leaving, Volume VIII of the Precedent Manual. The Manual defines a "voluntary leaving" and distinguishes it from other forms of separation from work (VL 5, 135.05, 440.495). It also states policies to be followed in determining whether there has been a voluntary leaving when the employment relationship has terminated in specific types of circumstances, including... [Extended list of references deleted.]

Another category contains policy statements regarding presumptions, burdens of proof, and weight and sufficiency of evidence (VL 190).

"Work" for purposes of Section 601 is defined at VL. 505. The rest of the volume deals with the "good Cause" requirement. [Footnote deleted.] "Good cause" is defined generally at VL. 210, and policies regarding the relationship between good cause and an individual's efforts to retain employment and leaving without notice are set forth at VL. 160 and VL. 290, respectively. More specific rules state policy with respect to whether voluntary leaving for certain reasons are with or without good cause. reasons for voluntary leaving subject to policymaking include:... [Extended list of references deleted.]

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Definition of Bona Fide Work

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

The Disqualification periods for voluntary leavings (Section 601), discharge for misconduct or felony (Section 602), and refusal of work (Section 603) extend for a certain number of weeks or until the individual earns a certain amount of money at "bona fide work." An individual is ineligible for benefits in a second successive benefits year unless he has earned remuneration for "bona fide work" (Section 607). What constitutes "bona fide work" is not made clear in the Act. The Department has "rules" defining bona fide work (ASB No. 105, BSB No. 833, MS 60.4). Rulemaking is appropriate.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Current Weekly Benefit Amount Definition

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

A person disqualified from receiving benefits by Section 601 (Voluntary leaving), 602 (Discharge for misconduct), 603 (Refusal of work), or 607 (Work requirements for second benefit year) may end the period of disqualification by earning an amount equal to a multiple of his "current weekly benefit amount." Apparently because there was or could have been some disagreement as to the meaning of the term, the Department has defined "current weekly benefit amount" (BSB No. 1252, Sup. No. 1). Interpretive rulemaking would be appropriate.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Discharge for Misconduct Definition

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 602 A and B of the Act disqualify an individual who has been discharged for misconduct or commission of a felony or theft in connection with his work. Before an individual can be declared ineligible for benefits pursuant to Section 602 three elements must be established. The separation from employment must constitute a discharge, the discharge must have been based on behavior which is serious enough to constitute misconduct, and the misconduct must have been connected with work. Because the meanings of the key terms "discharge," "misconduct," and "connected with" [Footnote deleted] are not precise, the Department has developed definitions, policies and principles to be applied in making determinations on issues arising under Section 602. These informal rules are found in Volume IV of the Precedent Manual, Misconduct. The general principle used to decide whether the offending act is "connected with work" is stated at MC 85.05. The term "misconduct" is defined generally, and the requirements for applicability of Sections 602 A and B are listed, at MC 5.05. The requirement of a causal connection between the act (be it misconduct, felony, or theft) and the discharge is spelled out in MC 5.05, 385.05, and 602.05. Rules related to burdens of proof and presumptions appear at MC 190. The requirement that there be a discharge is made more specific and distinguished from other forms of separation in the following categories:...

[Extended list of references deleted.]

The majority of material in Volume IV is concerned with principle to be applied in determining whether a discharge for a certain act or type of behavior is a discharge for misconduct connected with work. Policy statements are made regarding the following types of potential misconduct:...

[Extended list of references deleted]

The existence of informal rules and the imprecise nature of the statutory terms make interpretive rulemaking appropriate to clarify the applicability of the disqualifications under Section 602.

Date Agency Response Received; December 4, 1981

Nature of Agency Response: Will initiate rulemaking, but seems to disagree about the scope of the necessary rulemaking.

Unemployment Insurance: Notices of Possible Ineligibility Due to Felony or Theft

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 602 C of the Act provides that no benefit right accrues to one discharged because of the commission of felony or theft in connection with work, provided that the employer notifies the Director of Possible Ineligibility within time limits specified by regulation of the Director. The time is set in Regulation 14, but the Department also has policies with respect to the requirements of an effective or sufficient notification of possible ineligibility due to commission of a felony or misconduct (ASB Nos. 90, 106). These requirements would better be contained in rules.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Definition of "Fugitive from Justice"

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 602 C of the Act disqualifies an individual who was discharged because of the commission of a felony or theft in connection with work if the Department is properly notified by the employer and if the individual has admitted to the offense or been convicted of it. If the individual is in legal custody, is being held on bail, or is a "fugitive from justice," the determination of the individual's benefit rights is to be held in abeyance pending the result of legal proceedings. An individual can be considered a "fugitive from justice" for purposes of this Section only in certain circumstances (MC 602.05). Rulemaking is appropriate.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will consider initiating rulemaking.

Unemployment Insurance: Refusal to Work Disqualification

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 603 of the Act provides that: . . .
[Extended statutory quotation deleted.]

Several of the terms used in Section 603 are imprecise and susceptible to varied interpretations. These include, among others, such terms as "good cause," "suitable," "customary occupation," and "substantially less favorable." The section requires certain factors to be considered in determining the suitability of work but does not say how they are to be considered. Volume VI of the Precedent Manual, Refusal of Work, consists of definitions, considerations, principles and other policies and guidelines which are to be applied by claims adjudicators in making determinations on issues arising under Section 603.

The main thrust of Section 603 is that a person cannot refuse suitable work without good cause and still expect to receive unemployment insurance benefits. It is not surprising, then that the greater portion of Volume VI deals with personal circumstances and aspects of the offered employment which may constitute good cause for refusal or may render the job unsuitable. "Good cause" and "suitable" are defined independently (RW 210, RW 5.05), but at times the concepts tend to run together. An aspect of working conditions which may not be bad enough to render the work unsuitable may constitute good cause for refusal in certain circumstances. The Manual contains policies regarding the following reasons which may be good cause for refusal or may render work unsuitable: . . .
[Extended list of references deleted.]

Several other definitions are also found in Volume VI including definitions of the "prevailing" and "substantially less favorable" (RW 5.05, 450.155, 500.7), "customary self-employment" (RW 116.05), "customary occupation" (RW 5.05, 195.05, 510.1), "available work" (RW 5.05, 265.15), and "local work" (RW 5.05). Principles applied to the question of whether a person has failed to apply for work as directed are found in the following categories: . . .
[Extended list of references deleted.]

Other general rules concern the meaning of the "length of unemployment" and "prospects for securing work" considerations for suitability (RW 295, 365), presumptions, and burdens of proof (RW 190). This long list of policy indicates the strong desirability of rulemaking to implement Section 603.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking, but seems to disagree about the scope of the necessary rulemaking.

Unemployment Insurance: Definition of "Labor Dispute"

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 603 of the Act provides for the ineligibility of an individual whose unemployment is due to a stoppage of work resulting from a labor dispute. Apparently because the scope of the term "labor dispute" is not entirely clear, the Department has developed a definition of the term for the purpose of Section 604 (LD 5.05). Other related policies concern the duration of disputes and the proper procedures to be followed in such cases (BSB No. 300). Rulemaking would be appropriate.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will consider initiating rulemaking.

Unemployment Insurance: Supplemental Benefits from other Sources

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

An individual otherwise eligible for unemployment insurance benefits may be declared ineligible for benefits for weeks in which the individual receives disqualifying payments or income under the Act. Unemployment benefits sought under another law (Section 605), workmen's compensation (Section 606), vacation pay (Section 610), and retirement pay (Section 611) all serve to reduce one's Illinois benefits. No provision is made regarding payments under union supplemental unemployment benefits plans. In keeping with a ruling of the Attorney General, the Department's written policy is that such payments do not disqualify the recipient from unemployment insurance benefits (ASB No. 67). Such policies developed to address questions left open in the Act should be addressed through rulemaking.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Disqualifying Retirement Pay

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 611 of the Act provides that an individual shall be ineligible for benefits to the extent to which he has received disqualifying income. Part A of Section 611 defines "disqualifying income" for purposes of that Section as types of retirement pay or other payment based on the previous work of an individual. The Department has developed a more specific list of payments included by the term "retirement pay" and of retirement payments which are not disqualifying income (TPU 460.55). A published rule to this effect would be helpful and desirable.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Ineligibility of Academic Personnel Between Terms

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 601 deals with claims by academic personnel for benefits for weeks between academic years or terms. Individuals who performs services in instructional, research, or principal administrative capacities are ineligible for benefits for weeks between two successive academic years; between two regular terms, whether or not successive; or during paid sabbatical leave if the individual performed such service during the first year or term and if there is a contract or reasonable assurance that he will perform such services in the second year or term. Individuals who perform services for educational institutions in other capacities are ineligible for benefits for weeks between two successive academic years or terms if there is a reasonable assurance that the individual will perform such services in the second year or term. The Department has developed definitions of "Instructional capacity," "research capacity," and "principal administrative capacity" (BSB No. 1290), and policies regarding the eligibility of substitute teachers (BSB No. 1290, Sup. No. 3) and the meaning of "reasonable assurance" (MS 60.10).

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Ineligibility of Athletes Between Seasons

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 613 of the Act provides that athletes and others substantially all of whose services consist of participation in, or the preparation or training for, sports or athletic events shall be ineligible for benefits for weeks between successive season if there is a reasonable assurance that the individual will perform such services in the second season. The Department has developed policies which define "athlete," "substantially all," and "reasonable assurance" (MS 60.11). These policies should be embodied in published rules.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Has initiated rulemaking.

Unemployment Insurance: Evidence Required to Satisfy Citizenship Requirement

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 614 of the Act provides for the ineligibility of non-resident aliens. The Department has policies regarding the type of information required to establish an alien's right to work and regarding burdens of proof (MS 60.12, AA 70.05). Policies of this type would better be embodied in rules.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Has initiated rulemaking.

Unemployment Insurance: Special Filing Procedures in Cases Involving Labor Disputes

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 700 of Illinois Unemployment Insurance Act states that claims for benefits shall be filed in accordance with the Director's rules and regulations. Accordingly, the Department's procedures governing the filing of claims have been set forth in Regulation 17 and, to a lesser extent, in Regulation 28.

However, BSB No. 1266 discusses special claims procedures for cases involving labor disputes which are not set forth in the rules and regulations. This is policy which should appropriately be embodied in rules.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will consider initiating rulemaking.

Unemployment Insurance: Predetermination Interviews of Claimants

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 700 of the Illinois Unemployment Insurance Act states that claims shall be filed in accordance with the rules and regulations of the Director. Section 702 of the Act sets forth requirements governing the making of determinations by claims adjudicators.

Several of the Department's rules implement or interpret these sections, including Regulations 14, 17, and 28. BSB No. 1245, Sup. No. 10 contains policy that is not embodied in these or any of the other rules.

The policy involves what are called "pre-determination interviews" of claimants, and discusses not only notice requirements and the manner of conduct for such interviews, but also requirements governing the postponement of these interviews at the request of the claimant. Failure to report for the interview is cause for denial of benefits for the relevant period for a continued claim certification.

This is policy which, if still applicable, is appropriate for rulemaking.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will consider initiating rulemaking.

Unemployment Insurance: Time and Manner of Notices of Findings

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 701 of the Illinois Unemployment Insurance Act states in part that...[Extended statutory quotation deleted.]

Regulation 22 of the Department's rules and regulations partially implements Section 701 by defining the parties to the finding and who shall receive notice. However, in no place in the rules and regulations, or in the policy bulletins, does the Department indicate what it considers to be "prompt" notice.

Several of the public comments received by the Joint Committee about the unemployment insurance rules pointed out that while strict time limits were placed on employing units and claimants for the fulfillment of various of their responsibilities, the Department had no similar time limits for the fulfillment of its functions. In fact, several members of the public felt that the Department was exceedingly slow in this regard.

Section 701 requires in two instances that notices be given "promptly." To help insure that this mandated promptness is achieved, rulemaking which would set time limits, or at least define promptness, would be appropriate.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will consider initiating rulemaking.

Unemployment Insurance: Promptness of Notices of Determinations

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 702 of the Illinois Unemployment Insurance Act requires claims adjudicators, after making a determination, to "promptly notify" the claimant and employing units having made sufficient allegations of ineligibility of the determination and the reasons thereof. Regulation 14 discusses this notice of determination, but in no way establishes what the Department considers to be "prompt."

Because public comment has indicated that the Department is sometimes unduly slow in giving such notice, and because "promptness" is mandated by the Act in this instance, rulemaking which would set time limits or in some other way insure prompt notification of determination may be appropriate.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will consider initiating rulemaking.

Unemployment Insurance: Criteria for Reconsideration of Findings or Determination

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 703 of the Illinois Unemployment Insurance Act states that a claim adjudicator may reconsider a finding or a determination within certain time limits and under certain circumstances. Assuming that these time and circumstance requirements are met, the decision to make a reconsideration is in the discretion of the claims adjudicator. No regulations of the Department contain standards or criteria governing the exercise of this discretion, although related policy appears to be set forth in BSB No. 615 and ASB No. 34, Sup. 1.

Standards and criteria governing the exercise of this type of discretion would appear to be appropriate subjects for rulemaking.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will consider initiating rulemaking.

Unemployment Insurance: Claims Procedures for Extended Benefits

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 409 of the Illinois Unemployment Insurance Act provides for the payment of extended benefits under certain conditions. Section 700 of the Act states that claims for benefits shall be made in accordance with such regulations as the Director may prescribe. While the Department has regulations governing claims procedures for regular benefits, it has none relating to claims procedures for extended benefits.

BSB No. 1258, however, sets forth information about claims procedures for extended benefits. This, and other related policy or procedures not

embodied in the rules and regulations, would be appropriate for rulemaking.

State Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Hearing Procedures for Disputed Benefit Claims

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 804 of the Illinois Unemployment Insurance Act states that the "manner in which disputed claims for benefits shall be presented and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the Director for determining the rights of the parties."

The Department has, at least partially, implemented this provision in its Regulations 22, 23, 24, and 25. However, there appears to be policy contained in these bulletins, not embodied in the rules, which would be an appropriate subject for rulemaking. ASB No. 70, for example, appears to contain evidentiary requirements for cases in which an individual has moved to a locality with less favorable work opportunities than exist in the locality from which the individual originally came.

The type of policy would be an appropriate subject for rulemaking, making the regulations required by Section 804 of the Act more complete.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Criteria for Adding Parties to a Hearing

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 805 of the Illinois Unemployment Insurance Act states that:

The Director, Referee, and the Board of Review, in any hearing involving benefit claims, may add parties, whenever in his or its discretion, it is necessary to the proper disposition of the case. Such additional parties shall be entitled to reasonable notice of the proceedings and an opportunity to be heard.

The Department's Regulation 22 partially implements this provision by providing reasonable notice and an opportunity to be heard to parties added pursuant to Section 805. However, Regulation 22 does not provide the standards and criteria by which it is decided whether such parties actually are added to the proceedings. Such standards and criteria are a type of policy appropriately embodied in rules.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Payment of Witness Fees

Joint Committee Recommendation: August 20, 1981

Specific Recommendation: -

Section 1002 of the Illinois Unemployment Insurance Act states:

The fees of witnesses for attendance and travel shall be the same as fees of witnesses before the circuit courts of this State, such fees to be paid when the witness is excused from further attendance. The payment of such fees shall be made in the same manner as are other expenses incurred in the administration of this Act.

The Department does not have any regulations which set forth the amount and manner of payment of these witness fees.

However, COB No. 1105 contains quite a bit of policy concerning this subject, including explanations of who is eligible for witness fees, how payment is requested, the forms used, and the manner in which payment is actually made.

Such information, along with any other information, would appear to be an appropriate subject for rulemaking.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Criteria for Approval of Counsels' Fees

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 1200 of the Illinois Unemployment Insurance Act states that any individual claiming benefits in any proceeding before the Director, the Board of Review, or a Referee may be represented by counsel or other duly authorized agent. Section 1200 goes on to state that

no such counsel or agents shall either charge or receive for such services more than an amount approved by the Board of Review or, in cases arising under Section 604, by the Director. (Section 604 addresses labor disputes).

The Department has no regulations explaining how or by what standards and criteria such approval is granted, nor has the Joint Committee identified any policy bulletins concerned with this subject.

This approval is necessary before counsels or agents may receive their fees, and is granted in the discretion of the Board or the Director. Is

such approval granted only occasionally and intended to be generally applicable, or is separate approval necessary for each proceeding? Upon what basis is a given amount (or amounts) approved? Whatever the actual policy is in this instance, such would appear to be an appropriate subject for rulemaking.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Payment of benefits Through Employment Offices

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 400 of the Illinois Unemployment Insurance Act states

All benefits shall be paid through employment offices, as hereinafter provided, in accordance with such regulations as the Director may prescribe.

BSB No. 1098, Sup. 3, 6, 7, and BSB No. 1285 set forth procedures, not found in the rules and regulations, concerning the replacement of lost, stolen, or mutilated benefit checks. Such procedures would appear of the payment of benefits as mentioned in Section 400, and, as such, an appropriate subject for rulemaking.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking.

Unemployment Insurance: Actual Payment or Expenditure of Moneys

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 2100 of the Unemployment Insurance Act states that certain moneys received by the Department shall be paid out or expended at the direction of the Director "in accordance with such rules and regulations as he shall prescribe pursuant to the provisions of this Act." These moneys include that which is in the benefit account, in the clearing account, and in the unemployment trust fund account. Such moneys are used for, among other things, the payment of benefits, interest, penalties, contribution refunds, and transfer of funds to the federal government or other states.

The manner and procedures by which such payments or expenditures are actually made is not addressed in the Department's current regulations. For example, the Act and the rules and regulations explain who is eligible to receive benefits, but do not explain how such benefits are actually paid.

There are many aspects of the handling of funds which are purely internal procedures and not required to be embodied in rules. But there are other aspects, that affect the public, which would be appropriate for

rulemaking. A few examples of the latter would include procedures concerning incorrectly written benefit checks and contributions refund checks, the period of time in which uncashed checks remain valid, and whether payments are made by mail or in person or both. Such procedures which affect parties outside the Department would be appropriate for inclusion in the rules.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will consider initiating rulemaking.

Unemployment Insurance: Payment of benefits During Appeal, Reconsideration, or Complaint

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 706 of the Illinois Unemployment Insurance Act states...
[Extended statutory quotation deleted.]

Loosely translated, this means that once a decision has been made to pay benefits, those benefits are promptly paid even if an appeal, reconsideration, or complaint has been or could be filed. Payment of benefits continues normally unless it turns out that the original decision to pay benefits is reversed or changed, at which time such reversal or changes is then implemented.

BSB No. 751, Sup. No. 5; BSB No. 1245, Sup. No. 7; and ASB No. 18 all contain policy, not found in the current regulations, concerning Section 706. This policy relates to prompt payment of Interstate payments and the suspension of benefit payments. Such policy would appropriately be embodied in rules.

Date Agency Response Received: December 4, 1981

Nature of Agency Response: Will initiate rulemaking, but questions currency of some cited policy statements.

Constitutional Offices

Attorney General

Investigations Under the Consumer Fraud Act

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 3 of the Consumer Fraud and Deceptive Business Practices Act (Ill. Rev. Stat. 1979, ch. 121½, par. 263) provides that the Attorney General, in order to investigate possible violators of the Act, may

- a) Require that person to file on such terms as the Attorney General prescribes a statement or report in writing under oath

or otherwise, as to all information considered necessary;

- b) Examine under oath any person in connection with the conduct of any trade or commerce;
- c) Examine any merchandise or sample thereof, record, book, document, account or paper as he may consider necessary; and
- d) Pursuant to an order of a Circuit Court impound any record, book, document, account, paper or sample of merchandise that is produced in accordance with this Act, and retain it in his possession until the completion of all proceedings in connection with which it is produced.

These investigative tools may be used under the following circumstances: where it appears to the Attorney General that a person has violated or will violate the Act; when the Attorney General receives a written complaint alleging a violation of the Act; or when the Attorney General "believes it to be in the public interest that an investigation should be made to ascertain whether" a violation of the Act has or will occur (Ill. Rev. Stat. 1979, ch. 121½, par. 263). Section 4 of the Act (Ill. Rev. Stat. 1979, ch. 121½, par. 264) gives the Attorney General the power to issue subpoenas, to administer oaths or affirmations, and to hold hearings in conjunction with his Section 3 powers.

The language of the Act indicates that these investigative powers are discretionary. The Attorney General may choose among these investigative tools, or he may utilize all of them, depending on the circumstances of the person or activities being investigated. The rules of the Consumer Fraud and Protection Division implement the power to hold hearings, administer oaths, issue subpoenas, and require the filing of statements or reports. However, the Division's rules lack any standards to limit these discretionary powers. In addition, the Division's rules make no reference to the Attorney General's authority to examine and to impound merchandise and documents.

Section 4.02 of the IAPA requires that agency rules contain standards for the exercise of discretionary power. The IAPA defines "rule" as "any agency statement of general applicability which implements, applies, interprets or prescribes law or policy." (Ill. Rev. Stat. 1979, ch. 127, par. 1003.09) It appears that the Attorney General must have policy to govern the determination of when the powers granted by the Consumer Fraud and Deceptive Business Practices Act--which are very substantial--will be invoked. These policies are "rules" as defined by the IAPA. As such, they should be filed pursuant to that Act, and should include the standards and criteria required by Section 4.02 of that Act.

The Joint Committee recommends that the Attorney General promulgate rules outlining the policy and the standards and criteria used to judge whether he will exercise the discretion granted by Sections 4 and 5 of the Consumer Fraud and Deceptive Business Practices Act.

Date Agency Response Received: December 3, 1981

Nature of Agency Response: Refuse to comply with recommendation

Penalties and Sanctions Under Consumer Fraud Act

Joint Committee Recommendation: August 20, 1981

Specific Recommendation:

Section 7 of the Act (Ill. Rev. Stat. 1979, ch. 121½, par. 267) provides that the Attorney General may bring an action in circuit court for temporary or permanent injunction restraining the respondent from committing further violations of the Act. Section 7 also provides that in addition to granting injunctive relief, the court may: revoke or suspend respondent's corporate charter or authority to do business; dissolve respondent's corporation; appoint a receiver to control and administer respondent's business property; grant restitution to consumers injured by respondent's violation; and impose a civil penalty up to \$50,000. Section 6 of the Act (Ill. Rev. Stat. 1979, ch. 121½, par. 266) empowers the Attorney General to seek similar relief against a person who refuses "to file any statement or report, or obey any subpoena issued by the Attorney General" in aid to its investigation of a possible violation of the Act.

The Division's rules do not even mention the Attorney General's discretionary power to seek those remedies or sanctions. In light of the severity of these sanctions which may be sought against an alleged violator of the Act, and in light of the definition of "rule" in the IAPA, and the mandate of Section 4.02 of the IAPA, the Joint Committee recommends that the Attorney General should promulgate rules which set out the standards under the Division will exercise its power to seek injunctive and other relief.

Date Agency Response Received: December 3, 1981

Nature of Agency Response: Refuse to comply with recommendation

SECTION FOUR

RECOMMENDED LEGISLATION

The Joint Committee has developed eight specific bills as a result of its activities during 1981. Four of these bills are being recommended for consideration by the General Assembly during the 1982 legislative session, while the other four are being suggested to the agencies and appropriate legislative Committee for further consideration. Most of the recommended and suggested bills included here addresses specific issues which were uncovered during the review of specific rules. The first bill, however, is a recommended amendment to the Administrative Procedure Act which could affect all state agencies.

The full text of each of the recommended and suggested bills is included in this section of the Annual Report. A brief discussion of the background and purposes of each of these bills is presented in the initial portion of this section. A table at the beginning of the entire report (page 5) provides cross-references to the various portions of the report relating to each of the recommended bills.

In many ways, despite the detail included in the specific bills, this may be the most important section of the Annual Report. It represents the most tangible results of the Joint Committee's activities during the year. It also represents the most visible way in which the Committee serves to enhance interaction and coordination between implementation and enactment of state policy, between the administrative and legislative branches of government.

RECOMMENDED BILLS

Bills one through four are being recommended by the Joint Committee for legislative consideration during the 1982 session. The Committee believes that these bills raise issues which are important enough to merit consideration despite the limited nature of the legislative session.

Background

One of the goals of the Joint Committee on Administrative Rules is to periodically update and fine-tune the Illinois Administrative Procedure Act, so that it will insure the opportunity for public participation in the rulemaking process while continuing an effective tool of legislative oversight. Toward this end, the Joint Committee is suggesting several changes in the Act.

First, experience has shown that the forty-five day second notice period does not always provide enough time for the Joint Committee to consult with agencies and determine what course of action should be taken on a rule or set of rules. This problem is particularly acute when a rule or a set of rules is voluminous and complex. This problem can best be solved by providing for a ninety-day extension that such an extension would be useful. The Joint Committee would not be authorized to extend the period on its own initiative.

Second, situations have arisen in which it would be advantageous for agencies to withdraw a second notice and submit one at a later date. It is felt that the Act should be amended so that it clearly provides agencies with the authority to do so.

Third, Section 3 of the IAPA needs to be amended to reflect the fact that P.A. 82-492 added a new definition as Section 3.10. This is simply a technical correction in the Act.

Fourth, the authority of the Joint Committee to submit for publication in the Illinois Register the dates on which certain action is taken with respect to proposed rulemaking should be expanded to include submission and withdrawal of second notices, extensions of the second notice period, and return of second notices by the Joint Committee to agencies when the notices are deemed incomplete or inadequate. These additional dates will help insure that the public is adequately informed of agencies' rulemaking actions.

Summary

Bill one would make the following changes in the Illinois Administrative Procedure Act: (1) Agencies would be allowed to extend the second notice period and additional forty-five days. (2) Agencies would be allowed to withdraw second notices for subsequent resubmission. (3) Section 3 would be changed to reflect the fact that definitions are now contained in Sections 3.01 through 3.10. (4) The Joint Committee's authority to publish dates on which action concerning proposed rulemaking is taken would be expanded.

BILL TWO (pages 180-183)

Background

In the process of conducting its five-year review of existing agency rules, the Joint Committee on Administrative Rules reviewed Rule 14.4.4(b) of the Illinois Department of Public Health's "Rules and Regulations Promulgated under the Illinois Plumbing Code." That rule states:

The authorized representative of the administrative authority shall after proper identification, have the right to enter any premises for the purpose of enforcing any ordinance, resolution, rule or regulation, or code adopted to regulate plumbing and plumbers.

The Joint Committee objected to this rule at its meeting on November 18, 1980. The rule can be read to sanction searches conducted in violation of the Fourth Amendment as interpreted in Camara v. Municipal Court, 387 U. S. 523 (1967), See v. Seattle, 387 U.S. 541 (1967), and cases decided since. Because the Department of Public Health has since refused to change its rule, the Joint Committee is recommending legislation requiring the Department to bring its rule into line with the Fourth Amendment.

Summary

Bill Two amends the Plumbing Code to require the Department of Public Health to adopt and abide by rules which will insure that administrative searches to enforce plumbing law provisions are conducted in compliance with the Fourth Amendment.

BILL THREE (pages 184-190)

Background

On July 18, 1980, the Department of Registration and Education published proposed rules to govern the operation of the Medical Disciplinary Board. These rules set out the grounds for disciplining persons seeking to practice medicine in terms which are, for the most part, direct quotations from Section 16 of the Medical Practice Act (Ill. Rev. Stat. ch. 111, par. 4433). Certain statutory terms which were quoted in the rules are unnecessarily vague. A reviewing court could conceivably hold that this vagueness renders the rules, and thus possibly the statute, constitutionally infirm, while a set of rules which clarifies the terms would be more likely to allow a court to uphold both the rules and the statute.

Furthermore, the vagueness of the rules violates Section 4.02 of the Illinois Administrative Procedure Act, which requires each rule implementing a discretionary power to include the standards by which the agency shall exercise the power. By repeating the statutory language which sets forth reasons for Department action in terms which are somewhat vague, the Department has failed to include the standards for its action which this section requires. On the basis of this reasoning, the Joint Committee voted an objection to three vague provisions in these rules on October 17, 1980. The Department has refused to modify its rules in response to the objections.

Summary

Bill Three requires, the Department of Registration and Education to set forth standards for the Medical Disciplinary Board in connection with the following terms:

- a) Sufficiently rehabilitated to warrant the public trust.
- b) Dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud, or harm the public.

c) Immoral conduct in practice as a physician.

d) Repeated acts of gross misconduct.

BILL FOUR (Pages 191-195)

Background

The Environmental Protection Act was passed into law in 1970, creating the Pollution Control Board and granting it the power to adopt rules covering a variety of subjects. Several requirements for public notice and public hearings were included in the Act to guide the Board's rulemaking process, at a time when most state agencies adopting rules needed only to file a copy of the rule with the Secretary of State.

Since 1970, of course, the rulemaking requirements imposed on all agencies have increased with the enactment of the Illinois Administrative Procedure Act and its various amendments, which evince the legislative intent to bring the public into the rulemaking process of all state agencies. The Board has treated the Illinois Administrative Procedure Act requirements as an additional set of procedures which are undertaken only after they have complied with all requirements imposed by the Environmental Protection Act (See Ill. Rev. Stat., ch. 111½, pars. 1026-1029). The result has been the creation of a rulemaking procedure more cumbersome and time-consuming than was probably intended when the two pieces of legislation were enacted.

On a number of occasions the Joint Committee has encountered problems caused by the cumbersome and time-consuming nature of the Board's rulemaking process. The process has resulted in greater reliance by the Board on individual variances and rulings, rather than rulemaking. It has also aggravated tension between the Board and the Environmental Protection Agency. This recommended bill would help alleviate some of these problems by dove-tailing the provisions of the two acts.

Summary

Bill Four amends the Environmental Protection Act to clearly provide that the cumbersome rulemaking procedure which is currently utilized by the Pollution Control Board need not be followed as long as the Board complies with the provisions of both that Act and the Illinois Administrative Procedure Act.

SUGGESTED BILLS

Bills Five through Eight address less significant issues than the four recommended bills. The Joint Committee is suggesting these bills to the affected agencies and to the appropriate standing committees for further consideration. While some of these bills may receive consideration during 1982 as a result of their suggestion by the Joint Committee, it is more likely that they will be refined during the interim by the agencies and committees for legislative action in the full 1983 session. The Joint Committee will continue to monitor its suggestions to insure that the problems addresses are resolved satisfactorily.

BILL FIVE (pages 196-198)

Background

The Department of Conservation published notices of two proposed rulemakings in the Illinois Register on March 9, 1981, both of which related to the Illinois Historic Preservation Act (Ill. Rev. Stat., ch. 127, par. 133d1 through 133d14). One of these rules was intended to access to the site inventory files of the State Historic Preservation Officer (who, by law, is the Director of the Department of Conservation. Only certain persons would be allowed to have access to the files, and certain conditions were provided to control such access.

The Department does not have statutory authority for this rulemaking, and the Joint Committee objected on this basis at its meeting on June 16, 1981. The text of the specific objections appears on pages 87-88. However, because there appear to be sound policy considerations behind these rules, the Joint Committee is suggesting legislation to give the necessary authority

to the Department. This bill is being referred to the Department of Conservation and the appropriate House and Senate standing committees for further consideration.

Summary

Bill Five would allow the Department of Conservation to adopt rules placing certain limits on access to the site inventory files of the State Historic Preservation Officer.

BILL SIX (pages 199-200)

Background

The Department of Conservation published notices of two proposed rulemakings in the Illinois Register on March 9, 1981, both of which related to the Illinois Historic Preservation Act (Ill. Rev. Stat., ch. 127, par. 133d1 through 133d14). One of these rules prescribed minimum professional qualifications for archaeologists with whom the Department would contract to carry out projects connected with the Historic Preservation Act.

The Joint Committee objected to this rulemaking on June 16, 1981, because the Department lacked the statutory authority to adopt it. The Department responded by withdrawing the rulemaking. The objection is listed on page 88 of this report.

Because the rules appear to have a reasonable policy basis, the Joint Committee is suggesting legislation to provide the necessary statutory authority. The legislation is being referred to the Department of Conservation and the appropriate House and Senate standing committee for further consideration.

Summary

Bill Six would give the Department the authority to prescribe minimum standards for archaeologists with whom the Department contracts to carry out projects connected with the Illinois Historic Preservation Act.

BILL SEVEN (pages 201-206)

Background

In 1979, the Joint Committee in reviewing the department of Labor's proposed rules on the administration and enforcement of the Child Labor Law noted several apparent internal conflicts in the Act. Although the Department modified the rules in response to the Joint Committee's objections, the Act continued to require clarification. The major problem concerns conflicts between Section 1 and Section 7 and 9 of the Act, which make the Act difficult to administer.

In early 1981 the Joint Committee again considered the rules under the Child Labor Law as part of its five-year review of existing agency rules. The Committee noted in this review that the rules impose certain conditions on the employment of children as models. While the purpose and effect of these rules may be laudable, there appears to be no statutory authority for them.

In response to the Joint Committee's discussion of this issue, the Department stated that it might be willing to support legislation concerning children involved in modeling and other theatre-related occupations. The Joint Committee therefore has developed and is suggesting legislation permitting the Department to regulate the employment of children in these areas. This legislation will be referred to the House and Senate committee responsible for labor-related bills and the Department of Labor for further consideration.

Summary

Bill Seven amends the Child Labor Law to eliminate inconsistencies between the lists of occupations in which minors may not be employed in various sections of the law. The bill would also reorganize the provisions of

the law for clarity and grant authority to the Department of Labor to adopt rules governing the employment of minors in modeling and theatre-related areas.

BILL EIGHT (pages 207-216)

Background

On November 7, 1980, the Department of Registration and Education published proposed amendments the "Rules for the Administration of the Illinois Controlled Substances Act". These amendments would change Rules 39(C) and 40(A) to allow practitioners licensed federally and practicing in Illinois (but not licensed by the State of Illinois) to issue prescriptions for Schedule II controlled substances on conventional prescription forms. They similarly would allow out-of-state practitioners to issue such prescriptions and allow Illinois pharmacists to fill such prescriptions.

The Joint Committee objected to these amendments on March 2, 1981 because of the incompatibility of these rules with the language of the Controlled Substances Act (Ill. Rev. Stat., ch. 56½, pars. 1100-1603). More specifically, Section 308 of that Act (Ill. Rev. Stat., ch. 56½, par. 1308) provides that no practitioner may issue a prescription for a Schedule II controlled substance other than on special triplicate prescription blanks to be furnished in packets of 100 by the Department. Section 309 (Ill. Rev. Stat., ch. 56½, par. 1309) provides that no person shall issue or fill a prescription for a Schedule II substance if the prescription is written on other than a triplicate form, except in emergencies.

There are sound policy reasons behind allowing federal and out-of-state practitioners to issue prescriptions which can be filled by licensed pharmacists in Illinois. However, in the case of Schedule II controlled substances, the Department has stated that it cannot issue the official triplicate prescription forms to federal and out-of-state practitioners and still maintain adequate control over the forms. Therefore, it appears that the Controlled Substances Act should be amended to exempt these practitioners from the requirement that they use the official triplicate forms.

Summary

The Joint Committee seeks legislation to allow out-of-state and federal practitioners to issue prescriptions for Schedule II substances on conventional forms, and to allow Illinois pharmacists to fill these prescriptions.

82nd GENERAL ASSEMBLY State of Illinois

1981 and 1982

INTRODUCED _____, BY

BILL ONE

SYNOPSIS: (Ch. 127, pars. 1003, 1005.01, 1007.02)

Amends the Administrative Procedure Act to provide that agencies may extend the second notice period, withdraw second notices and subsequently resubmit them, and adopt rules only after the second notice period has expired unless the Joint Committee on Administrative Rules earlier notifies the agency that no objection will be issued; and to allow publication in the Illinois Register of notice of withdrawn notices, notices for which the second notice period has been extended and notices which were deemed inadequate or incomplete by the Joint Committee.

LRB8206123MWjo

Fiscal Note Act
may be applicable

A BILL FOR

1 AN ACT to amend Sections 3, 5.01 and 7.02 of "The 49
2 Illinois Administrative Procedure Act", approved September 50
3 22, 1975, as amended. 51

4 ~~Be it enacted by the People of the State of Illinois,~~ 55
5 ~~represented in the General Assembly:~~

6 Section 1. Sections 3, 5.01 and 7.02 of "The Illinois 57
7 Administrative Procedure Act", approved September 22, 1975, 58
8 as amended, are amended to read as follows:

(Ch. 127, par. 1003) 60

9 Sec. 3. As used in this Act, unless the context 62
10 otherwise requires, the terms specified in Sections 3.01 63
11 through 3.10 3-89 have the meanings ascribed to them in those 64
12 Sections. 65

(Ch. 127, par. 1005.01) 67

13 Sec. 5.01. General rulemaking.) In all rulemaking to 69
14 which Sections 5.02 and 5.03 do not apply, each agency shall: 70

15 (a) Give at least 45 days' notice of its intended action 72
16 to the general public. This first notice period shall 73
17 commence on the first day the notice appears in the Illinois 74
18 Register. The first notice shall include:

19 1. The text of the proposed rule, or the old and new 77
20 materials of a proposed amendment, or the text of the 78
21 provision to be repealed;

22 2. The specific statutory citation upon which the 80
23 proposed rule, the proposed amendment to a rule or the 81
24 proposed repeal of a rule is based and is authorized;

25 3. A complete description of the subjects and issues 83
26 involved;

27 4. For all proposed rules and proposed amendments to 85
28 rules, an initial regulatory flexibility analysis, which 86
29 shall contain a description of the types of small businesses 87
30 subject to the rule; a brief description of the proposed 88
31 reporting, bookkeeping, and other procedures required for

1 compliance with the rule; and a description of the types of 89
 2 professional skills necessary for compliance; and 90
 3 5. The time, place and manner in which interested 93
 4 persons may present their views and comments concerning the
 5 proposed rulemaking.
 6 During the first notice period, the agency shall provide 95
 7 all interested persons who submit a request to comment within 96
 8 the first 14 days of the notice period reasonable opportunity 97
 9 to submit data, views, arguments or comments, which may, in 98
 10 the discretion of the agency, be submitted either orally or 99
 11 in writing or both. The notice published in the Illinois
 12 Register shall indicate the manner selected by the agency for 100
 13 such submissions. The agency shall consider all submissions 101
 14 received.
 15 The agency shall hold a public hearing on the proposed 103
 16 rulemaking, during the first notice period, in the following 104
 17 cases: (1) the agency finds that a public hearing would 105
 18 facilitate the submission of views and comments which might 106
 19 not otherwise be submitted; (2) the agency receives a request 107
 20 for a public hearing, within the first 14 days after 108
 21 publication of the notice of proposed rulemaking in the
 22 Illinois Register, from 25 interested persons, an association 109
 23 representing at least 100 interested persons, the Governor, 110
 24 the Joint Committee on Administrative Rules, or a unit of 111
 25 local government which may be affected. At the public
 26 hearing, the agency shall allow interested persons to present 112
 27 views and comments on the proposed rulemaking. Such a public 113
 28 hearing in response to a request for a hearing may not be 114
 29 held less than 20 days after the publication of the notice of 115
 30 proposed rulemaking in the Illinois Register, unless notice
 31 of the public hearing is included in the notice of proposed 116
 32 rulemaking. A public hearing on proposed rulemaking may not 117
 33 be held less than 10 days before submission of the notice 118
 34 required under paragraph (b) of this Section to the Joint 119
 35 Committee on Administrative Rules. Each agency may prescribe

1 reasonable rules for the conduct of public hearings on 125
 2 proposed rulemaking to prevent undue repetition at such 126
 3 hearings. Such hearings must be open to the public and 127
 4 recorded by stenographic or mechanical means. 128

5 (b) Provide up to 45 days additional notice of the 130
 6 proposed rulemaking to the Joint Committee on Administrative 131
 7 Rules. The second notice period shall commence on the day 132
 8 written notice is received by the Joint Committee and will be 133
 9 45 days in length unless the agency extends it for an 134
 10 additional 45 days as provided in this subsection or unless
 11 it expires earlier due to ~~shall expire 45 days thereafter~~ 135
 12 ~~unless prior to that time the agency shall have received a~~ 136
 13 ~~statement of objection from the joint committee or~~ 137
 14 notification from the Joint Committee that no objection will 138
 15 be issued.

16 The written notice to the Joint Committee shall include: 140
 17 (1) the text and location of any changes made to the proposed 141
 18 rulemaking during the first notice period; (2) for all 142
 19 proposed rules and proposed amendments to rules, a final 143
 20 regulatory flexibility analysis, which shall contain a
 21 summary of issues raised by small businesses during the first 144
 22 notice period; and a description of actions taken on any 145
 23 alternatives to the proposed rule suggested by small 146
 24 businesses during the first notice period, including reasons 147
 25 for rejecting any alternatives not utilized; and, (3) if 148
 26 written request has been made by the Joint Committee within
 27 30 days after initial notice appears in the Illinois Register 149
 28 pursuant to Paragraph (a) of this Section, an analysis of the 150
 29 economic and budgetary effects of the proposed rulemaking. 151

30 The agency may withdraw a notice submitted under this 153
 31 subsection by notifying the Joint Committee in writing of the 154
 32 withdrawal; however, the agency must wait for a period of 30 155
 33 days after such withdrawal before it may file another second 156
 34 notice for the rulemaking. ~~After submitting written notice to~~
 35 ~~the Joint Committee under this subsection, the agency may not~~ 157

1 ~~period for an additional 45 days to allow additional time for~~ 150
 2 ~~consideration of the rulemaking by the Joint Committee.~~ 159

3 After commencement of the second notice period, no 162
 4 substantive change may be made to a proposed rulemaking 163
 5 unless it is made in response to an objection or suggestion 164
 6 of the Joint Committee.

7 The agency shall also send a copy of the final regulatory 160
 8 flexibility analysis to each of the small businesses which 167
 9 have presented views or comments on the proposed rulemaking 168
 10 during the first notice period and to any interested person 169
 11 who requests a copy during the first notice period. The 170
 12 agency may charge a reasonable fee for providing such copies 171
 13 to cover postage and handling costs.

14 (c) After the expiration of ~~the second notice period, or~~ 173
 15 ~~45--days~~ after notification from the Joint Committee that no 174
 16 objection will be issued, or after response by the agency to 176
 17 a statement of objections issued by the Joint Committee, 177
 18 whichever is applicable, the agency ~~may adopt the rulemaking~~ 177
 19 ~~by filing~~ ~~shall file~~ pursuant to Section 6 of this Act, a 178
 20 certified copy of each rule, modification, or repeal of any 179
 21 rule adopted by it. ~~A notice of such adopted rulemaking,~~ 190
 22 ~~which~~ shall be published in the Illinois Register. Each rule 181
 23 hereafter adopted under this Section is effective upon 182
 24 filing, unless a later effective date is required by statute 183
 25 or is specified in the rule.

26 (d) No rule or modification or repeal of any rule may be 185
 27 adopted, or filed with the Secretary of State, more than one 186
 28 year after the date the first notice period for the 187
 29 rulemaking under paragraph (a) commenced. Any period during 188
 30 which the rulemaking is prohibited from being filed under 189
 31 Section 7.06a shall not be considered in calculating this 190
 32 one-year time period. This paragraph (d) applies to any rule 191
 33 or modification or repeal of any rule which has not been 191
 34 filed with the Secretary of State prior to ~~January 1, 1986~~ 192
 35 ~~the effective date of this regulatory act of 1986.~~ 193

(Ch. 127, par. 1007.02)

195

1 Sec. 7.02. (a) The Joint Committee on Administrative 197
 2 rules, is hereby created. The Joint Committee shall be 198
 3 composed of 13 members, 4 members appointed by the President 199
 4 of the Senate and 4 by the Senate Minority Leader, and 4 200
 5 members appointed by the Speaker of the House of 201
 6 Representatives and 4 by the House Minority Leader.

7 Members of the Joint Committee shall be appointed during 203
 8 the month of July of each odd numbered year for 2 year terms 204
 9 beginning August 1, and until their successors are appointed 205
 10 and qualified. In the event of a death of a member or if a 206
 11 member ceases to be a member of the General Assembly a 207
 12 vacancy shall exist. Vacancies shall be filled for the time 208
 13 remaining of the term in the same manner as the original 209
 14 appointments. All appointments shall be in writing and filed 209
 15 with the Secretary of State as a public record. 210

16 (b) The Joint Committee shall organize during the month 212
 17 of September each odd numbered year by electing a Chairman 213
 18 and such other officers as it deems necessary. The 214
 19 chairmanship of the Joint Committee shall be for a 2 year 215
 20 term and may not be filled in 2 successive terms by persons
 21 of the same house of the General Assembly. Members of the 216
 22 Joint Committee shall serve without compensation, but shall 217
 23 be reimbursed for expenses. The Joint Committee shall hold 218
 24 monthly meetings and may meet oftener upon the call of the 219
 25 Chairman or 4 members. A quorum of the Joint Committee 220
 26 consists of a majority of the members.

27 (c) When feasible the agenda of each meeting of the 222
 28 Joint Committee shall be submitted to the Secretary of State 223
 29 to be published at least 5 days prior to the meeting in the 224
 30 Illinois Register. The Joint Committee may also weekly, or 225
 31 as often as necessary, submit for publication in the Illinois 226
 32 Register lists of the dates on which notices under ~~proposition~~
 33 ~~Article~~ Section 5.01(a)-(b)-(c) were received and the dates on 227
 34 which the proposed rulemaking will be considered. ~~Each list~~ 228

1 may also indicate for notices which were withdrawn, notices 229
2 for which the second notice period has been extended for an 230
3 additional 45 days and notices which were deemed to be 231
4 incomplete or inadequate and returned to the submitting
5 agency. The provisions of this subsection shall not prohibit 233
6 the Joint Committee from acting upon an item that was not 234
7 contained in the published agenda.

8 (d) The Joint Committee shall appoint an Executive 236
9 Director who shall be the staff director. The Executive 237
10 Director shall receive a salary to be fixed by the Joint 238
11 Committee.

12 The Executive Director shall be authorized to employ and 240
13 fix the compensation of such necessary professional, 241
14 technical and secretarial staff and prescribe the duties of 242
15 such staff.

16 (e) A permanent office of the Joint Committee shall be 244
17 in the State Capitol Complex wherein the Space Needs 245
18 Commission shall provide suitable offices. 246

19 (f) The Joint Committee may charge reasonable fees for 248
20 copies of documents or publications to cover the cost of 249
21 copying or printing. However, the Joint Committee shall 250
22 provide copies of documents or publications without cost to 251
23 agencies which are directly affected by recommendations or 252
24 findings included in such documents or publications. 253

82nd GENERAL ASSEMBLY
State of Illinois

1981 and 1982

INTRODUCED _____, BY

BILL TWO

SYNOPSIS: (Ch. 111, pars. 1107 and 1139)

Amends the Plumbing License Law by providing that inspections to determine compliance with such Act shall be conducted with due regard to the rights of persons to privacy.

LRB8206130BDjo

A BILL FOR

1 AN ACT to amend Sections 8 and 41 of the "Illinois 48
2 Plumbing License Law", approved July 13, 1953, as amended. 50

3 ~~As it enacted by the People of the State of Illinois,~~ 54
4 ~~represented in the General Assembly:~~

5 Section 1. Sections 8 and 41 of the "Illinois Plumbing 56
6 License Law", approved July 13, 1953, as amended, are amended 57
7 to read as follows:

 (Ch. 111, par. 1107) 59

8 Sec. 8. The Director shall: 61

9 (1) Prepare forms for application for examination for 'a 63
10 plumber's license.

11 (2) Prepare and issue licenses as provided in this Act. 65

12 (3) With the aid of the Board prescribe rules and 67
13 regulations for examination of applicants for plumber's 68
14 licenses.

15 (4) With the aid of the Board prepare and give uniform 70
16 and comprehensive examinations, to applicants for a plumber's 71
17 license which shall test their knowledge and qualifications 72
18 in the planning and design of plumbing systems, their 73
19 knowledge, qualifications, and manual skills in plumbing, and
20 their knowledge of the State's minimum code of standards 74
21 relating to fixtures, materials, design and installation 75
22 methods of plumbing systems, promulgated pursuant to the 76
23 "Illinois Plumbing Code Law", approved June 18, 1957, as 77
24 amended.

25 (5) Issue a plumber's license and license renewal to 79
26 every applicant who has passed the examination and who has 80
27 paid the required license and renewal fee.

28 (6) Prescribe rules for hearings to deny, suspend, 82
29 revoke or reinstate licenses as provided in this Act. 83

30 (7) Maintain a current record showing (a) the names and 85
31 addresses of licensed plumbers and licensed apprentice 86
32 plumbers, (b) the dates of issuance of licenses, (c) the date 87

1 and substance of the charges set forth in any hearing for 88
2 denial, suspension or revocation of any license, (d) the date
3 and substance of the final order issued upon each such 89
4 hearing, and (e) the date and substance of all petitions for 90
5 reinstatement of license and final orders on such petitions.

6 (8) Prescribe uniform and reasonable rules defining what 92
7 constitutes an approved course of instruction in plumbing, in 93
8 colleges, universities, or trade schools, and approve or 94
9 disapprove the courses of instruction offered by such 95
10 colleges, universities, or trade schools by reference to
11 their compliance or noncompliance with such rules. Such rules 96
12 shall be designed to assure that an approved course of 97
13 instruction will adequately teach the design, planning, 98
14 installation, replacement, extension, alteration and repair
15 of plumbing. In prescribing such rules the Director may 99
16 consult with the Chief Sanitary Engineer of the Department of 100
17 Public Health, the Senior Professor of Sanitary Engineering 101
18 of the University of Illinois, and with the Board.

19 ~~(9) Prescribe rules to ensure that inspections conducted 103~~
20 ~~pursuant to Section 41 of this Act are conducted with due 104~~
21 ~~regard to the rights of persons to privacy. 106~~

(Ch. 111, par. 1139) 108

22 Sec. 41. The Department is authorized and directed to 110
23 make inspections necessary to determine compliance with this 111
24 Act and the plumbing code promulgated hereunder. Such 112
25 ~~inspections shall be conducted with due regard to the rights 113~~
26 ~~of persons to privacy. The Department shall adopt rules to~~
27 ~~assure that such rights are not violated by such inspections 114~~
28 ~~and that such inspections are limited to accomplishing the 115~~
29 ~~express purposes of this Act. The rules shall include 116~~
30 ~~standards to be used by the Department to determine whether~~
31 ~~or not to conduct an inspection in specific instances. The 117~~
32 ~~standards may be based upon the passage of time, the nature 118~~
33 ~~of the structure involved, the condition of the entire area, 119~~
34 ~~or other relevant factors, but need not depend upon specific 120~~

1 knowledge_of_the_conditions_of_the_particular_structure.

121

82nd GENERAL ASSEMBLY State of Illinois

1981 and 1982

INTRODUCED _____, BY

BILL THREE

SYNOPSIS: (Ch. 111, par. 4433)

Amends the Medical Practice Act to require the Department of Registration and Education to adopt rules concerning standards for rehabilitation, immoral conduct, gross misconduct and dishonorable or unethical conduct.

LRB8206129BDjo

A BILL FOR

1 AN ACT to amend Section 16 of the "Medical Practice Act", 49
2 approved June 30, 1923, as amended. 51

3 Be it enacted by the People of the State of Illinois, 55
4 represented in the General Assembly:

5 Section 1. Section 16 of the "Medical Practice Act", 57
6 approved June 30, 1923, as amended, is amended to read as 58
7 follows:

(Ch. 111, par. 4433) 60

8 Sec. 16. The Department may revoke, suspend, place on 62
9 probationary status, or take any other disciplinary action as 63
10 the Department may deem proper with regard to the license, 64
11 certificate or state hospital permit of any person issued 65
12 under this Act or under any other Act in this State to 66
13 practice medicine, to practice the treatment of human 67
14 ailments in any manner or to practice midwifery, or may 68
15 refuse to grant a license, certificate or state hospital 69
16 permit under this Act or may grant a license, certificate or 70
17 State hospital permit on a probationary status subject to the 71
18 limitations of the probation, and may cause any license or 72
19 certificate which has been the subject of formal disciplinary 73
20 procedure to be marked accordingly on the records of any
21 county clerk upon any of the following grounds:

22 1. Performance of an elective abortion in any place, 75
23 locale, facility, or institution other than: 76

24 (a) a facility licensed pursuant to the "Ambulatory 78
25 Surgical Treatment Center Act" as heretofore or hereafter 79
26 amended:

27 (b) an institution licensed pursuant to "An Act relating 81
28 to the inspection, supervision, licensing, and regulation of 82
29 hospitals" approved July 1, 1953, as heretofore or hereafter 83
30 amended; or

31 (c) an ambulatory surgical treatment center or 85
32 hospitalization or care facility maintained by the State or 86

1 any agency thereof, where such department or agency has . 87
 2 authority under law to establish and enforce standards for 88
 3 the ambulatory surgical treatment centers, hospitalization, 89
 4 or care facilities under its management and control; or
 5 (d) Ambulatory surgical treatment centers, 91
 6 hospitalization or care facilities maintained by the Federal 92
 7 Government; or
 8 (e) Ambulatory surgical treatment centers, 94
 9 hospitalization or care facilities maintained by any 95
 10 university or college established under the laws of this 96
 11 State and supported principally by public funds raised by 97
 12 taxation;
 13 2. Performance of an abortion procedure in a wilful and 99
 14 wanton manner on a woman who was not pregnant at the time the 101
 15 abortion procedure was performed;
 16 3. Conviction in this or another State of any crime 103
 17 which is a felony under the laws of this State or conviction 104
 18 of a felony in a federal court, unless such person 105
 19 demonstrates to the Department that he has been sufficiently 106
 20 rehabilitated to warrant the public trust;
 21 4. Gross or repeated malpractice resulting in serious 108
 22 injury or death of a patient; 109
 23 5. Engaging in dishonorable, unethical or unprofessional 111
 24 conduct of a character likely to deceive, defraud or harm the 112
 25 public;
 26 6. Obtaining a fee, either directly or indirectly, 114
 27 either in money or in the form of anything else of value or 115
 28 in the form of a financial profit as personal compensation, 116
 29 or as compensation, charge, profit or gain for an employer or 117
 30 for any other person or persons, on the fraudulent 118
 31 representation that a manifestly incurable condition of 119
 32 sickness, disease or injury of any person can be permanently
 33 cured;
 34 7. Habitual intemperance in the use of ardent spirits, 121
 35 narcotics or stimulants to such an extent as to incapacitate 122

1	for performance of professional duties;	123
2	8. Holding one's self out to treat human ailments under	125
3	any name other than his own, or the personation of any other	126
4	physician;	
5	9. Employment of fraud, deception or any unlawful means	128
6	in applying for or securing a license, certificate, or state	129
7	hospital permit to practice the treatment of human ailments	130
8	in any manner, to practice midwifery or in passing an	131
9	examination therefor, or wilful and fraudulent violation of	132
10	the rules and regulations of the department governing	133
11	examinations;	
12	10. Holding one's self out to treat human ailments by	135
13	making false statements, or by specifically designating any	136
14	disease, or group of diseases and making false claims of	137
15	one's skill, or of the efficacy or value of one's medicine,	138
16	treatment or remedy therefor;	
17	11. Professional connection or association with, or	140
18	lending one's name to, another for the illegal practice by	141
19	another of the treatment of human ailments as a business, or	142
20	professional connection or association with any person, firm,	143
21	or corporation holding himself, themselves, or itself out in	144
22	any manner contrary to this Act;	
23	12. Revocation or suspension of a medical license in a	146
24	sister state;	
25	13. A violation of any provision of this Act or of the	148
26	rules and regulations formulated for the administration of	149
27	this Act;	
28	14. Directly or indirectly giving to or receiving from	151
29	any physician, person, firm or corporation any fee,	152
30	commission, rebate or other form of compensation for any	153
31	professional services not actually and personally rendered.	154
32	Nothing contained in this subsection prohibits persons	155
33	holding valid and current licenses under this Act from	156
34	practicing medicine in partnership under a partnership	
35	agreement or in a corporation authorized by "The Medical	157

1 Corporation Act", as now or hereafter amended, or as an 158
2 association authorized by "The Professional Association Act" 159
3 as now or hereafter amended, or under "The Professional 160
4 Corporation Act" as now or hereafter amended, or from
5 pooling, sharing, dividing or apportioning the fees and 161
6 monies received by them or by the partnership, corporation or 162
7 association in accordance with the partnership agreement or 163
8 the policies of the Board of Directors of the corporation or 164
9 association. Nothing contained in this subsection prohibits 165
10 2 or more corporations authorized by "The Medical Corporation 166
11 Act", as now or hereafter amended, from forming a partnership 167
12 or joint venture of such corporations, and providing medical, 168
13 surgical and scientific research and knowledge by employees
14 of these corporations if such employees are licensed under 169
15 this Act, or from pooling, sharing, dividing, or apportioning 170
16 the fees and monies received by the partnership or joint 171
17 venture in accordance with the partnership or joint venture 172
18 agreement. Nothing contained in this subsection shall 174
19 abrogate the right of 2 or more persons holding valid and
20 current licenses under this Act to receive adequate 175
21 compensation for concurrently rendering professional services 176
22 to a patient and divide a fee; provided, the patient has full 177
23 knowledge of the division, and, provided, that the division 178
24 is made in proportion to the services performed and 179
25 responsibility assumed by each;

26 15. A finding by the Medical Disciplinary Board that the 181
27 registrant after having his license placed on probationary 182
28 status violated the terms of the probation;

29 16. Abandonment of a patient;

30 17. The use or prescription for use of narcotics or 187
31 controlled substances (designated products) in any way other 188
32 than for therapeutic purposes;

33 18. Promotion of the sale of drugs, devices, appliances 191
34 or goods provided for a patient in such manner as to exploit 192
35 the patient for financial gain of the physician;

1	19. Offering, undertaking or agreeing to cure or treat	195
2	disease by a secret method, procedure, treatment or medicine,	196
3	or the treating, operating or prescribing for any human	197
4	condition by a method, means or procedure which the licensee	198
5	refuses to divulge upon demand of the Department of	199
6	Registration and Education;	
7	20. Immoral conduct in practice as a physician, or	201
8	repeated acts of gross misconduct;	202
9	21. Willfully making or filing false records or reports	204
10	in his practice as a physician, including, but not limited	205
11	to, false records to support claims against the medical	206
12	assistance program of the Department of Public Aid under the	207
13	Public Aid Code;	
14	22. Willful omission to file or record, or willfully	209
15	impeding the filing or recording or inducing another person	210
16	to omit to file or record medical reports as required by law	211
17	or willfully failing to report an instance of suspected child	212
18	abuse or neglect as required by the "Abused and Neglected	213
19	Child Reporting Act", as now or hereafter amended;	
20	23. Solicitation of professional patronage by any	215
21	corporation, agents or persons, or profiting from those	216
22	representing themselves to be agents of the licensee;	217
23	24. Gross and willful and continued overcharging for	219
24	professional services, including filing false statement for	220
25	collection of fees for which services are not rendered,	221
26	including, but not limited to, filing such false statements	222
27	for collection of monies for services not rendered from the	223
28	medical assistance program of the Department of Public Aid	224
29	under the Public Aid Code;	
30	25. Professional incompetence as manifested by poor	226
31	standards of care or mental incompetency as declared by a	227
32	court of competent jurisdiction;	228
33	26. Physical illness, including, but not limited to,	230
34	deterioration through the aging process, or loss of motor	231
35	skill which results in a physician's inability to practice	232

1	medicine with reasonable judgment, skill or safety.	233
2	All proceedings to suspend, revoke, place on probationary	235
3	status, or take any other disciplinary action as the	236
4	Department may deem proper with regard to a license or	237
5	certificate on any of the foregoing grounds, except the	238
6	ground numbered (9) (fraudulent grounds excepted) must be	239
7	commenced within 3 years next after the conviction or	
8	commission of any of the acts described therein, except as	240
9	otherwise provided by law; but the time during which the	241
10	holder of the license or certificate was without the State of	242
11	Illinois shall not be included within the 3 years.	
12	The entry of an order or judgment by any circuit court	244
13	establishing that any person holding a license or certificate	245
14	under this Act is a person in need of mental treatment	246
15	operates as a suspension of that license or certificate.	247
16	That person may resume his practice only upon a finding by	248
17	the Medical Disciplinary Board that he has been determined	
18	to be recovered from mental illness by the court and upon the	249
19	Board's recommendation that he be permitted to resume his	250
20	practice.	
21	<u>The Department shall adopt rules which set forth</u>	252
22	<u>standards to be used in determining:</u>	253
23	<u>(a) When a person will be deemed sufficiently</u>	255
24	<u>rehabilitated to warrant the public trust;</u>	256
25	<u>(b) What constitutes dishonorable, unethical or</u>	258
26	<u>unprofessional conduct of a character likely to deceive,</u>	259
27	<u>defraud, or harm the public;</u>	
28	<u>(c) What constitutes immoral conduct in practice as a</u>	261
29	<u>physician; and</u>	
30	<u>(d) What constitutes repeated acts of gross misconduct.</u>	263

82nd GENERAL ASSEMBLY State of Illinois

1981 and 1982

INTRODUCED _____, BY

BILL FOUR

SYNOPSIS: (Ch. 111 1/2, pars. 1027 and 1028)

Amends Environmental Protection Act. Provides that Pollution Control Board rule impact hearings conducted pursuant to the E.P.A. may be used to satisfy Administrative Procedure Act requirements concerning the impact of rules on small businesses. Provides that the Board may satisfy notice and hearing requirements for rulemaking of both the E.P.A. and the A.P.A. by complying with both Acts simultaneously. Effective immediately.

LRB8206125RLdh

A BILL FOR

1	AN ACT to amend Sections 27 and 28 of the "Environmental	52
2	Protection Act", approved June 29, 1970, as amended.	54
3	As it enacted by the People of the State of Illinois,	58
4	represented in the General Assembly:	
5	Section 1. Sections 27 and 28 of the "Environmental	60
6	Protection Act", approved June 29, 1970, as amended, are	61
7	amended to read as follows:	
	(Ch. 111 1/2, par. 1027)	63
8	Sec. 27. (a) The Board may adopt substantive regulations	65
9	as described in Sections 10, 13, 17, 22, 22.4 and 25 of this	66
10	Act. Any such regulations may make different provisions as	67
11	required by circumstances for different contaminant sources	68
12	and for different geographical areas; may apply to sources	69
13	outside this State causing, contributing to, or threatening	
14	environmental damage in Illinois; and may make special	70
15	provision for alert and abatement standards and procedures	71
16	respecting occurrences or emergencies of pollution or on	72
17	other short-term conditions constituting an acute danger to	73
18	health or to the environment. In promulgating regulations	74
19	under this Act, the Board shall take into account the	75
20	existing physical conditions, the character of the area	
21	involved, including the character of surrounding land uses,	76
22	zoning classifications, the nature of the existing air	77
23	quality, or receiving body of water, as the case may be, and	78
24	the technical feasibility and economic reasonableness of	79
25	measuring or reducing the particular type of pollution. The	80
26	generality of this grant of authority shall only be limited	81
27	by the specifications of particular classes of regulations	82
28	elsewhere in this Act.	
29	No charge shall be established or assessed by the board	84
30	or Agency against any person for emission of air contaminants	85
31	from any source, for discharge of water contaminants from any	86
32	source, or for the sale, offer or use of any article.	87

1 (b) Except as provided below, before the adoption of any 89
 2 proposed regulations, or amendment to existing regulations, 90
 3 the Board shall conduct hearings on the economic impact of 91
 4 those new regulations, and shall receive comments from the 92
 5 public regarding the study of the economic impact of those 93
 6 proposals prepared by the Institute as provided in Section 94
 7 5(b) of this Act. In adopting any such new regulation, the
 8 Board shall consider those elements detailed in the 95
 9 Institute's study and the Board shall, in its written 96
 10 opinion, make a determination, based upon the Institute's 97
 11 study and other evidence in the public hearing record, as to 98
 12 whether the proposed regulation has any adverse economic 99
 13 impact on the people of the State of Illinois.

14 ~~A hearing under subsection (b) of Section 4.03 of the~~ 101
 15 ~~Illinois Administrative Procedure Act may also be used to~~ 102
 16 ~~satisfy the requirements of this Section, so long as both~~ 103
 17 ~~provisions are fully complied with.~~

18 Notwithstanding this subsection or Section 6, the Board 105
 19 may modify and subsequently adopt any proposed regulations, 106
 20 or amendments to existing regulations without any additional 107
 21 economic study by the Institute pursuant to Section 6 (d); 108
 22 provided that, such modification by the Board does not 109
 23 significantly alter the intent and purpose of the proposed 110
 24 regulation which was the subject of the Institute's study.

25 (c) On proclamation by the Governor, pursuant to Section 112
 26 8 of the "Illinois Emergency Services and Disaster Act of 113
 27 1975", that a disaster emergency exists, or when the Board 114
 28 finds that a severe public health emergency exists, the Board 115
 29 may, in relation to any proposed regulation, order that such 116
 30 regulation shall take effect without delay and the Board 117
 31 shall proceed with the hearings and studies required by this
 32 Section while the regulation continues in effect. 119

(Ch. 111 1/2, par. 1028) 121

33 Sec. 23. Any person may present written proposals for 124
 34 the adoption, amendment, or repeal of the Board's 125

1 regulations, and the Board may make such proposals on its own 126
 2 motion. If the Board finds that any such proposal is
 3 supported by an adequate statement of reasons, is accompanied 127
 4 by a petition signed by at least 200 persons, is not plainly 128
 5 devoid of merit and does not deal with a subject on which a 129
 6 hearing has been held within the preceding 6 months, the 130
 7 Board shall schedule a public hearing for consideration of
 8 the proposal. If such proposal is made by the Agency or by 131
 9 the Institute, the Board shall schedule a public hearing 132
 10 without regard to the above conditions. The Board may also in 133
 11 its discretion schedule a public hearing upon any proposal 134
 12 without regard to the above conditions.

13 No substantive regulation shall be adopted, amended, or 136
 14 repealed until after a public hearing within the area of the 137
 15 State concerned. In the case of state-wide regulations 138
 16 hearings shall be held in at least two areas. At least 20 139
 17 days prior to the scheduled date of the hearing the Board
 18 shall give notice of such hearing by public advertisement in 140
 19 a newspaper of general circulation in the area of the state 141
 20 concerned of the date, time, place and purpose of such 142
 21 hearing; give written notice to any person in the area 143
 22 concerned who has in writing requested notice of public
 23 hearings; and make available to any person upon request 144
 24 copies of the proposed regulations, together with summaries 145
 25 of the reasons supporting their adoption. 146

26 Any public hearing relating to the adoption, amendment, 148
 27 or repeal of Board regulations under this subsection shall be 149
 28 held before a qualified hearing officer, who shall be 150
 29 attended by at least one member of the Board, designated by 151
 30 the Chairman. All such hearings shall be open to the public,
 31 and reasonable opportunity to be heard with respect to the 152
 32 subject of the hearing shall be afforded to any person. All 153
 33 testimony taken before the Board shall be recorded 154
 34 stenographically. The transcript so recorded, and any written 155
 35 submissions to the Board in relation to such hearings, shall

1 be open to public inspection, and copies thereof shall be 156
 2 made available to any person upon payment of the actual cost 157
 3 of reproducing the original.

4 After such hearing the Board may revise the proposed 159
 5 regulations before adoption in response to suggestions made 160
 6 at the hearing, without conducting a further hearing on the 161
 7 revisions.

8 Any person heard or represented at a hearing or 163
 9 requesting notice shall be given written notice of the action 164
 10 of the Board with respect to the subject thereof. 165

11 ~~Procedures and hearings required by subsection (a) of~~ 167
 12 ~~Section 2.21 of the Illinois Administrative Procedure Act may~~ 168
 13 ~~also be used to satisfy the requirements of this Section, so~~ 169
 14 ~~long as both provisions are fully complied with.~~ 170

15 ~~No rule or regulation or amendment or repeat thereof~~ 172
 16 ~~shall become effective until a certified copy thereof has~~ 173
 17 ~~been filed with the Secretary of State and thereafter as~~ 174
 18 ~~provided in "An Act concerning administrative rules"~~ 175
 19 ~~approved June 24, 1951, as amended.~~ 176

20 Section 2. This Act takes effect upon its becoming a 178
 21 law.

82nd GENERAL ASSEMBLY
State of Illinois

1981 and 1982

INTRODUCED _____, BY

BILL FIVE

SYNOPSIS: (Ch. 127, par. 133d5)

Amends the "Illinois Historic Preservation Act" to authorize the Department of Conservation to adopt rules governing access to the State Historic Preservation Officer's site inventory files.

LRB8206126GLtc

A BILL FOR

1 AN ACT to amend Section 5 of the "Illinois Historic 47
2 Preservation Act", approved August 14, 1976, as amended. 49

3 As it enacted by the People of the State of Illinois, 53
4 represented in the General Assembly:

5 Section 1. Section 5 of the "Illinois Historic 55
6 Preservation Act", approved August 14, 1976, as amended, is 56
7 amended to read as follows:

(Ch. 127, par. 133d5) 58

8 Sec. 5. In addition to the powers otherwise specifically 60
9 granted to the Department by law, the Department shall have. 61
10 the following powers and responsibilities:

11 (a) to perform the administrative functions for the 63
12 Council;

13 (b) to hold public hearings and meetings concerning the 65
14 Illinois Register of Historic Places; 66

15 (c) to prepare and periodically revise a statewide 68
16 preservation plan;

17 (d) to attempt to maximize the extent to which the 70
18 preservation of Registered Illinois Historic Places is 71
19 accomplished through active use, including self-sustaining or 72
20 revenue-producing use and through the involvement of persons 73
21 other than the Department; and

22 (e) to disseminate information of Registered Illinois 75
23 Historic Places, to provide technical and other assistance to 76
24 persons involved in preservation activities, to develop 77
25 interpretive programs and otherwise stimulate public interest 78
26 in preservation.

27 (f) to adopt rules governing access to the State 80
28 Historic Preservation Officer's site inventory files, the 81
29 purpose of which rules shall be to insure that 82
30 information from the site inventory files is given only to 83
31 persons with legitimate research or cultural resource
32 research interests, and (iii) to impose reasonable 84

1 conditions on the use of such information.

45

82nd GENERAL ASSEMBLY State of Illinois

1981 and 1982

INTRODUCED _____, BY

BILL SIX

SYNOPSIS: (Ch. 127, par. 133d5)

Amends the Illinois Historic Preservation Act. Provides that the Department of Conservation has the power and the responsibility to adopt rules prescribing minimum professional qualifications for archaeologists with whom the Department contracts to carry out projects under the Act.

LRB8206127PLjw

A BILL FOR

1 AN ACT to amend Section 5 of the "Illinois Historic 48
2 Preservation Act", approved August 14, 1976, as amended. 50

3 ~~As it enacted by the People of the State of Illinois,~~ 54
4 ~~represented in the General Assembly:~~

5 Section 1. Section 5 of the "Illinois Historic 56
6 Preservation Act", approved August 14, 1976, as amended, is 57
7 amended to read as follows:

(Ch. 127, par. 133d5) 59

8 Sec. 5. In addition to the powers otherwise specifically 61
9 granted to the Department by law, the Department shall have 62
10 the following powers and responsibilities:

11 (a) to perform the administrative functions for the 64
12 Council;

13 (b) to hold public hearings and meetings concerning the 66
14 Illinois Register of Historic Places; 67

15 (c) to prepare and periodically revise a statewide 69
16 preservation plan;

17 (d) to attempt to maximize the extent to which the 71
18 preservation of Registered Illinois Historic Places is 72
19 accomplished through active use, including self-sustaining or 73
20 revenue-producing use and through the involvement of persons 74
21 other than the Department; and

22 (e) to disseminate information of Registered Illinois 76
23 Historic Places, to provide technical and other assistance to 77
24 persons involved in preservation activities, to develop 78
25 interpretive programs and otherwise stimulate public interest 79
26 in preservation; and

27 (f) to adopt rules prescribing minimum professional 81
28 qualifications for archaeologists with whom the Department 82
29 contracts to carry out projects under this Act. 84

82nd GENERAL ASSEMBLY

State of Illinois

1981 and 1982

INTRODUCED _____, BY

BILL SEVEN

SYNOPSIS:

(Ch. 48, pars. 31.1, 31.2, 31.3, 31.4, 31.6 and 31.16; new par. 31.8-1; rep. par. 31.9)

Amends The Child Labor Law to clarify occupations in which minors may be employed. Provides that the rulemaking power of the Department of Labor is subject to provisions of the Illinois Administrative Procedure Act and authorizes the Department to adopt rules governing employment of minors in modeling and entertainment related areas.

LRB8206121THsh

A BILL FOR

1 AN ACT to amend Sections 1, 2, 3, 4, 6 and 16 of and to 50
 2 add Section 8-1 to and to repeal Section 9 of the "Child 51
 3 Labor Law", approved June 30, 1945, as amended. 52

4 As it enacted by the People of the State of Illinois, 56
 5 represented in the General Assembly:

6 Section 1. Sections 1, 2, 3, 4, 6 and 16 of the "Child 58
 7 Labor Law", approved June 30, 1945, as amended, are amended, 59
 8 and Section 8-1 is added thereto, the amended and added 60
 9 Sections to read as follows:

(Ch. 48, par. 31.1) 62

10 Sec. 1. (a) No minor under 16 years of age shall be 64
 11 employed, permitted, or suffered to work within this State in 65
 12 any gainful occupation, except agriculture, unless the 66
 13 person, firm or corporation employing such minor obtains and 67
 14 keeps on file an employment certificate. No--minor--under--to 68
 15 years--of--age--except--minors--14--or--15--years--of--age--who--are 69
 16 participating--in--federally--funded--work--experience--career 70
 17 education--programs--under--the--direction--of--the--State--Board--of
 18 Education--at--any--time--shall--be--employed--permitted--or 71
 19 suffered--to--work--in--any--gainful--occupation--in--connection--with 72
 20 any--theater--concert--hall--or--place--of--amusement--or--any 73
 21 mercantile--institution--store--office--hotel--laundry 74
 22 manufacturing--establishment--milk--cannery--factory--or 75
 23 workshop--restaurant--lunch--rooms--beauty--parlors--barber
 24 shop--bakeries--coast--brick--or--lumber--yard--or--in--any--type--of 76
 25 construction--work--within--this--state--However 77

26 (b) Minors between 14 and 16 years of age may be 80
 27 employed, permitted, or suffered to work outside school hours
 28 and during school vacations if such work is (1) but not in 81
 29 dangerous or hazardous factory work and (2) not prohibited by 82
 30 Section 7 of this Act and (3) not or in any occupation 84
 31 otherwise prohibited by law or by order or regulation made in 85
 32 pur-suance of law.

1 ~~(c) No minor under 12 years of age, except members of the~~ 88
2 ~~farmers own family who live with the farmer at his principal~~ 89
3 ~~place of residence, at any time shall be employed, permitted~~
4 ~~or suffered to work in any gainful occupation in connection~~ 90
5 ~~with agriculture, except that this provision shall not~~ 91
6 ~~apply: (1) to members of a farmer's own family who live at~~ 92
7 ~~his principal place of residence; (2) to minors engaged in~~ 93
8 ~~agricultural pursuits other than as a gainful occupation; or~~ 94
9 ~~(3) to any minor of 10 years of age or more who may be~~ 95
10 ~~permitted to work in a gainful occupation in connection with~~
11 ~~agriculture during the school vacations or outside of school~~ 96
12 ~~hours.~~

13 ~~(d) The requirement that the person, firm or corporation~~ 98
14 ~~employing a minor obtain and keep on file an employment~~ 99
15 ~~certificate shall not apply to minors 14 and 15 years of age~~ 100
16 ~~who are participating during summer vacations, in an~~ 101
17 ~~occupational, vocational or educational program funded by the~~
18 ~~Comprehensive Employment and Training Act. This subsection~~ 102
19 ~~does not exempt such programs from any other requirement of~~ 103
20 ~~this Act.~~

21 ~~(e) Minors between 14 and 16 years of age participating~~ 105
22 ~~in federally funded work experience career education programs~~ 106
23 ~~under the direction of the State Board of Education may be~~ 107
24 ~~employed, permitted or suffered to work during the school~~ 108
25 ~~day, provided such work performance does not conflict with~~
26 ~~any other provision of law.~~ 110

 (Ch. 48, par. 31.2) 112

27 Sec. 2. Nothing in this Act applies to ~~(1)~~ the work of 114
28 a minor engaged in ~~agricultural pursuits except for those~~ 116
29 ~~persons restricted from working in a gainful occupation in~~ 117
30 ~~connection with agriculture in Section 17 in the sale and~~
31 ~~distribution of magazines and newspapers at hours when the~~ 118
32 ~~schools of the district are not in session; nothing in this~~ 119
33 ~~Act applies to (1) the employment of a minor outside school~~ 120
34 ~~hours in and around a home at work usual to the home of the~~ 122

1 employer so long as that work is not in connection with or a 122
 2 part of the business, trade or profession of the employer. 124
 3 Nothing in this Act applies to or (3) the work of a minor of 125
 4 13 years of age or more in caddying at a golf course who is 126
 5 13 or more years of age. Nothing in Section 9 of this Act 128
 6 applies to a minor 14 or 15 years of age during that part 129
 7 of the year from June 1 through September 15 in an
 8 occupational, vocational or educational program funded by 130
 9 the Comprehensive Employment and Training Act. 132

(Ch. 48, par. 31.3) 134

10 Sec. 3. No minor under 16 years of age shall be 137
 11 employed, permitted, or suffered to work in any gainful 138
 12 occupation mentioned in Section 1 of this Act for more than 6 139
 13 consecutive days in any one week, or more than 48 hours in
 14 any one week, or more than 8 hours in any one day, or be so 140
 15 employed, permitted or suffered to work between 7 p.m. and 7 141
 16 a.m. from Labor Day until June 1 or between 9 p.m. and 7 a.m. 142
 17 from June 1 until Labor Day.

18 The hours of work of minors under the age of 16 years 144
 19 employed outside of school hours shall not exceed 3 a day on 145
 20 days when school is in session, nor shall the combined hours 146
 21 of work outside and in school exceed a total of 8 a day. 148

(Ch. 48, par. 31.4) 150

22 Sec. 4. No minor under 16 sixteen ~~four~~ years of age 152
 23 shall be employed, or permitted to work in any gainful 153
 24 occupations mentioned in Section 1 of this Act for more than 154
 25 2 five ~~four~~ hours continuously without an interval of at least 155
 26 20 thirty ~~four~~ minutes for meal period, and no period of less 156
 27 than 20 thirty ~~four~~ minutes shall be deemed to interrupt a 157
 28 continuous period of work. 159

(Ch. 48, par. 31.6) 159

29 Sec. 6. It shall be the duty of every employer of minors 161
 30 between the ages of 14 and 16 years employed for or in 162
 31 connection with any gainful occupation mentioned in Section 1 163
 32 to keep a register upon the premises where the work is being 164

1 done on which register shall be recorded the name, age and 164
 2 place of residence of every minor between the ages of 14 and 165
 3 16 years. It shall be unlawful for any person, firm or 166
 4 corporation to hire or employ or to permit or suffer to work 167
 5 in or for or in connection with any of the gainful occupation 168
 6 ~~occupations--mentioned--in--Section--11~~, any minor between the 169
 7 ages of 14 and 16 years unless there is first procured and 170
 8 placed on file on the premises where the work is being done, 171
 9 employment certificates issued as hereinafter provided and 172
 10 accessible to the authorized officers or employees of the 173
 11 Department of Labor, and to the truant officers or other
 12 school officials charged with the enforcement of the 174
 13 compulsory education law. 176

(Ch. 48, new par. 31.8-1) 178

14 Sec. 8-1. Notwithstanding the provisions of this Act, 180
 15 minors under 16 years of age may be employed as models, or as 181
 16 performers on live or pre-recorded radio or television, or in 182
 17 motion pictures, or in other entertainment related 183
 18 performances, subject to reasonable conditions to be imposed
 19 by rule of the Department of Labor. This Section shall not 184
 20 apply to employment covered by Section 8 of this Act. 185

(Ch. 48, par. 31.16) 187

21 Sec. 16. (a) The Department of Labor shall make, 189
 22 promulgate and enforce such reasonable rules and regulations 191
 23 relating to the administration and enforcement of the
 24 provisions of this Act, including the issuance of 192
 25 certificates authorized under this Act, as may be deemed 193
 26 expedient. Such rulemaking is subject to the provisions of 194
 27 the Illinois Administrative Procedure Act. (b) In order to
 28 promote uniformity and efficiency of issuance, it shall in 196
 29 consultation with the State Superintendent of Education
 30 formulate the forms on which certificates shall be issued and 197
 31 also forms needed in connection with such issuance, and it 198
 32 shall supply such forms to the issuing officers. (c) The 199
 33 Department of Labor, its deputies and inspectors, may suspend 200

1	any certificate as an emergency action imperatively required	200
2	for the public health, safety and welfare of minors if in	201
3	their judgment it was improperly issued or if the minor is	203
4	illegally employed. If the certificate is so suspended the	204
5	employer and all interested parties shall be notified of such	
6	suspension in writing and such minor shall not thereafter be	205
7	employed, permitted, or suffered to work until a final order	206
8	is issued by the Department of Labor after a hearing either	207
9	reinstating or revoking the certificate. The hearing shall	208
10	commence within 21 days after the date of any such	
11	suspension. If the certificate is revoked the minor shall	209
12	not thereafter be employed, permitted or suffered to work.	210
13	until a new certificate for his employment has been obtained.	211
	(Ch. 48, rep. par. 31-9)	214
14	Section 2. Section 9 of the "Child Labor Law", approved	216
15	June 30, 1945, as amended, is repealed.	217

82nd GENERAL ASSEMBLY State of Illinois

1981 and 1982

INTRODUCED _____, BY

BILL EIGHT

SYNOPSIS: (Ch. 56 1/2, pars. 1308, 1309, 1311 and 1312)

Amends the Illinois Controlled Substances Act to permit prescribers of certain Schedule II controlled substances, who are U.S. employees acting in the scope of their employment or out of State doctors to issue prescriptions for such substances on conventional prescription forms written in triplicate and signed by the prescriber.

LRB8206128RCm1

A BILL FOR

1 AN ACT to amend Sections 308, 309, 311 and 312 of the 49
 2 "Illinois Controlled Substances Act", approved August 16, 50
 3 1971, as amended. 51

4 ~~As it enacted by the People of the State of Illinois,~~ 55
 5 ~~represented in the General Assembly:~~

6 Section 1. Sections 308, 309, 311 and 312 of the 57
 7 "Illinois Controlled Substances Act", approved August 16, 58
 8 1971, as amended, are amended to read as follows:

{Cn. 56 1/2, par. 1308} 60

9 Sec. 308. ~~(a) Except as provided in subsection (d),~~ 62
 10 every practitioner who issues a prescription for a controlled 64
 11 substance in Schedule II, which is a narcotic drug listed in
 12 Section 206 of this Act; or which contains any quantity of 65
 13 amphetamine or methamphetamine, their salts, optical isomers 66
 14 or salts of optical isomers; phenmetrazine and its salts; 67
 15 pentazocine; methaqualone; or which is hereafter determined 68
 16 to be a "designated product," as defined in Section 102 of 69
 17 this Act, shall issue such prescription, on official 70
 18 prescription blanks which shall be issued by the Department
 19 of Registration and Education except as otherwise provided in 71
 20 this Act. The prescription blanks issued by the Department 72
 21 of Registration and Education shall be in serial numoered 73
 22 groups of 100 blanks, each in triplicate, and shall be 74
 23 furnished at a reasonable charge to such practitioner and 75
 24 such prescription olanks shall not be transferable. The 76
 25 prescription blanks shall be printed on distinctive paper,
 26 serial number of the group being shown on each blank and also 77
 27 each blank being serially numbered. No more than one such 78
 28 prescription group shall in any case be issued or furnished 79
 29 by the Department of Registration and Education to the same 80
 30 prescriber at one time.

31 ~~(d) Notwithstanding the provisions of subsection (a),~~ 82
 32 ~~prescribers who are employees of the United States and who~~ 83

are acting within the scope of their employment and
prescribers who are duly licensed to practice in another
state may issue prescriptions for the substances listed in
subsection 1a1-27 conventional prescription forms, which
shall be written in triplicate and all three copies signed by
the prescriber.

(Ch. 56 1/2, par. 1309)

Sec. 309. Except as provided in Section 30a of this
Act, no person shall issue a prescription for a Schedule II
controlled substance, which is a narcotic drug listed in
Section 206 of this Act; or which contains any quantity of
amphetamine or methamphetamine, their salts, optical isomers
or salts of optical isomers; phenmetrazine and its salts;
pentazocine; methaqualone; or which is hereafter determined
to be a "designated product," as defined in Section 102 of
this Act, other than on the official prescription blank
issued by the Department of Registration and Education and no
person shall fill any such prescription other than on the
official prescription blank issued by the Department of
Registration and Education, except as provided in Section 112
of this Act; provided that in the case of an emergency,
epidemic or a sudden or unforeseen accident or calamity, the
prescriber may issue a lawful oral prescription or a written
prescription on a blank other than the official prescription
blank issued by the Department of Registration and Education
where failure to issue such a prescription might result in
loss of life or intense suffering, but such prescription
shall have endorsed thereon by the prescriber a statement
concerning the accident or calamity, or circumstances
constituting the emergency, the cause for which the
unofficial blank was used. All prescriptions on the official
blanks shall be written in triplicate and all three copies
signed by the prescriber. All prescriptions issued for
Schedule II controlled substances shall include both a
written and numerical notation of quantity on the face of the

1 prescription. No prescription for a Schedule II controlled 116
 2 substance may be refilled. 118

(Ch. 56 1/2, par. 1311) 120

3 Sec. 311. For all controlled substances covered by 122
 4 Sections 308 and 309 of this Act, the original and one copy 123
 5 of the official prescription blank shall be delivered to the 124
 6 person filling the prescription ~~unless the prescription is~~ 125
 7 ~~issued by a prescriber employed by the United States acting~~ 126
 8 ~~within the scope of employment or by a prescriber duly~~
 9 ~~licensed to practice in another state; in which case two~~ 127
 10 ~~signed prescriptions on conventional prescription forms shall~~ 128
 11 ~~be delivered; one of which shall be clearly marked~~ 129
 12 ~~"original" and one of which shall be clearly marked~~
 13 ~~"duplicate".~~ The duplicate shall be properly endorsed by the 130
 14 person filling the prescription at the time such prescription 131
 15 is filled, with his own signature and the date of filling. 132
 16 The original official prescription blank shall be retained by 133
 17 the person filling the prescription and by the 15th of the 134
 18 month following the month in which the prescription was 135
 19 filled, the duplicate shall be returned to the Department of
 20 Registration and Education at its principal office. These 137
 21 duplicates, any reproductions of these in any form, any 138
 22 computations of the duplicates, any statistics derived from
 23 the duplicates or compilations, and any studies incorporating 139
 24 material from these sources shall be available for inspection 140
 25 and reproduction by any person whom the Director of the 141
 26 Department of Law Enforcement has authorized to do so. 143

(Ch. 56 1/2, par. 1312) 145

27 Sec. 312. (a) A practitioner, in good faith, may 147
 28 dispense a Schedule II controlled substance, which is a 148
 29 narcotic drug listed in Section 206 of this Act; or which 149
 30 contains any quantity of amphetamine or methamphetamine, 150
 31 their salts, optical isomers or salts of optical isomers; 151
 32 phermetrazine and its salts; pentazocine; methaqualone; or 152
 33 which is hereafter determined to be a "designated product;"

1 as defined in Section 102 of this Act to any person upon an 153
2 official prescription form ~~or, in the case of a prescription~~ 154
3 ~~issued by a prescriber employed by the United States and~~ 155
4 ~~acting within the scope of employment or by a prescriber duly~~ 156
5 ~~licensed to practice in another state; upon two conventional~~
6 ~~prescription forms, both of which shall be signed by the~~ 157
7 ~~prescriber, one of which shall be clearly marked "original",~~ 158
8 ~~and one of which shall be clearly marked "duplicate"; and~~ 159
9 Schedule III, IV, or V controlled substances to any person
10 upon a written prescription of any practitioner, dated and 160
11 signed by the person prescribing on the day when issued and 161
12 bearing the name and address of the patient for whom, or the 162
13 owner of the animal for which the controlled substance is 163
14 dispensed, and the full name, address and registry number 164
15 under the laws of the United States relating to controlled 165
16 substances of the person prescribing, if he is required by 166
17 those laws to be registered. If the prescription is for an
18 animal it shall state the species of animal for which it is 167
19 ordered. The practitioner filling the prescription shall 168
20 write the date of filling and his own signature on the face 169
21 of the official prescription form. The official prescription 170
22 form or the written prescription shall be retained on file by 171
23 the practitioner who filled it or pharmacy in which the 172
24 prescription was filled for a period of 2 years, so as to be
25 readily accessible for inspection or removal by any officer 173
26 or employee engaged in the enforcement of this Act. Whenever 174
27 the practitioner's or pharmacy's copy of any prescription 175
28 form is removed by an officer or employee engaged in the 176
29 enforcement of this Act, for the purpose of investigation or 177
30 as evidence, such officer or employee shall give to the 178
31 practitioner or pharmacy a receipt in lieu thereof. A
32 prescription form for a Schedule II controlled substance 179
33 shall not be filled more than 2 days after the date of 180
34 issuance. A written prescription for Schedule III, IV or V 181
35 controlled substances shall not be filled or refilled more 182

1 than 6 months after the date thereof or refilled more than 5 183
2 times unless renewed, in writing, by the practitioner. 184
3 (b) In lieu of a written prescription required by this 186
4 Section, a pharmacist, in good faith, may dispense Schedule 187
5 III, IV, or V substances to any person upon a lawful oral 188
6 prescription of a practitioner which oral prescription shall 189
7 be reduced promptly to writing by the pharmacist and such 190
8 written memorandum thereof shall be dated on the day when 191
9 such oral prescription is received by the pharmacist and 192
10 shall bear the full name and address of the ultimate user for 193
11 whom, or of the owner of the animal for which the controlled 194
12 substance is dispensed, and the full name, address, and 195
13 registry number under the law of the United States relating 196
14 to controlled substances of the practitioner prescribing, if 197
15 he is required by those laws to be so registered, and the 198
16 pharmacist filling such oral prescription shall write the 199
17 date of filling and his own signature on the face of such 200
18 written memorandum thereof. The written memorandum of the 201
19 oral prescription shall be retained on file by the proprietor 202
20 of the pharmacy in which it is filled for a period of not 203
21 less than two years, so as to be readily accessible for 204
22 inspection by any officer or employee engaged in the 205
23 enforcement of this Act in the same manner as a written 206
24 prescription. The oral prescription and the written 207
25 memorandum thereof shall not be filled or refilled more than 208
26 6 months after the date thereof or be refilled more than 5 209
27 times, unless renewed, in writing, by the practitioner. 210
28 (c) A controlled substance included in Schedule V shall 211
29 not be distributed or dispensed other than for a medical 212
30 purpose and not for the purpose of evading this Act, and 213
31 then: 214
32 (1) only personally by a person registered to dispense a 215
33 Schedule V controlled substance and then only to his 216
34 patients, or 217
35 (2) only personally by a pharmacist, and then only to a 218

1 person over 21 years of age who has identified himself to the 217
2 pharmacist by means of 2 positive documents of 218
3 identification.

4 (3) the dispenser shall record the name and address of 220
5 the purchaser, the name and quantity of the product, the date 221
6 and time of the sale, and the dispenser's signature. 222

7 (4) no person shall purchase or be dispensed more than 224
8 120 milliliters or more than 120 grams of any Schedule V 225
9 substance which contains codeine, dihydrocodeine, or any 226
10 salts thereof, or etnylmorphine, or any salts thereof, in any 227
11 96 hour period. The purchaser shall sign a form, approved by 228
12 the Department of Registration and Education, attesting that 229
13 he has not purchased any Schedule V controlled substances 230
14 within the immediately preceding 96 hours.

15 (5) a copy of the records of sale, including all 232
16 information required by paragraph (3), shall be forwarded to 233
17 the Department of Registration and Education at its principal 234
18 office by the 15th day of the following month. 235

19 (6) all records of purchases and sales shall be 237
20 maintained for not less than 2 years. 238

21 (7) no person shall obtain or attempt to obtain within 240
22 any consecutive 96 hour period any Schedule V substances of 241
23 more than 120 milliliters or more than 120 grams containing 242
24 codeine, dihydrocodeine or any of its salts, or etnylmorphine 243
25 or any of its salts. Any person obtaining any such 244
26 preparations or combination of preparations in excess of this 245
27 limitation shall be in unlawful possession of such controlled 246
28 substance. 246

29 (8) a person qualified to dispense controlled substances 248
30 under this Act and registered thereunder shall at no time 249
31 maintain or keep in stock a quantity of Schedule V controlled 250
32 substances defined and listed in Section 212 (c) (1), (2) or 251
33 (3) in excess of 4.5 liters for each substance; a pharmacy 252
34 shall at no time maintain or keep in stock a quantity of 253
35 Schedule V controlled substances as defined in excess of 4.5

1 liters for each substance, plus the additional quantity of 254
2 controlled substances necessary to fill the largest number of 255
3 prescription orders filled by that pharmacy for such 256
4 controlled substances in any one week in the previous year. 257
5 These limitations shall not apply to Schedule V controlled 258
6 substances which Federal law prohibits from being dispensed
7 without a prescription. 259

8 (d) Every practitioner shall keep a record of controlled 261
9 substances received by him and a record of all such 262
10 controlled substances administered, dispensed or 263
11 professionally used by him otherwise than by prescription. 264
12 It shall, however, be sufficient compliance with this 265
13 paragraph if any practitioner utilizing controlled substances
14 listed in Schedules III, IV and V shall keep a record of all 266
15 those substances dispensed and distributed by him other than 267
16 those controlled substances which are administered by the 268
17 direct application of a controlled substance, whether by 269
18 injection, inhalation, ingestion, or any other means to the 270
19 body of a patient or research subject. A practitioner who 271
20 dispenses, other than by administering, a controlled
21 substance in Schedule II, which is a narcotic drug listed in 272
22 Section 206 of this Act, or which contains any quantity of 273
23 amphetamine or methamphetamine, their salts, optical isomers 274
24 or salts of optical isomers, pentazocine, methaqualone, or 275
25 which is hereafter determined to be a "designated product" as 276
26 defined in Section 102 of this Act, shall do so only upon the 277
27 issuance of an official prescription blank; and every
28 practitioner who so dispenses such designated products shall 278
29 comply with the provisions of Sections 310 and 311 of this 279
30 Act.

31 (e) Whenever a manufacturer distributes a controlled 281
32 substance in a package prepared by him, and whenever a 282
33 wholesale distributor distributes a controlled substance in a 283
34 package prepared by him or the manufacturer, he shall 284
35 securely affix to each package in which that substance is 285

1 contained a label showing in legible English the name and 286
2 address of the manufacturer, the distributor and the
3 quantity, kind and form of controlled substance contained 287
4 therein. No person except a pharmacist and only for the 288
5 purposes of filling a prescription under this Act, shall 289
6 alter, deface or remove any label so affixed.

7 (f) Whenever a practitioner dispenses any controlled 291
8 substance, he shall affix to the container in which such 292
9 substance is sold or dispensed, a label indicating the date 293
10 of initial filling, the practitioner's name and address, the 294
11 serial number of the prescription, the name of the patient, 295
12 the name of the prescribing practitioner, the directions for 296
13 use and cautionary statements, if any, contained in any
14 prescription or required by law, the proprietary name or 297
15 names or the established name of the controlled substance, 298
16 and the dosage and quantity, except as otherwise authorized 299
17 by regulation by the Department of Registration and
18 Education. No person shall alter, deface or remove any label 300
19 so affixed.

20 (g) A person to whom or for whose use, any controlled 302
21 substance has been prescribed or dispensed by a practitioner, 303
22 or other persons authorized under this Act, and the owner of 304
23 any animal for which such substance has been prescribed or 305
24 dispensed by a veterinarian, may lawfully possess such 306
25 substance only in the container in which it was delivered to 307
26 him by the person dispensing such substance.

27 (h) The responsibility for the proper prescribing or 309
28 dispensing of controlled substances is upon the prescriber 310
29 and the responsibility for the proper filling of a 311
30 prescription for controlled substance drugs rests with the 312
31 pharmacist. An order purporting to be a prescription issued 313
32 to any individual, which is not in the regular course of 314
33 professional treatment nor part of an authorized methadone
34 maintenance program, nor in legitimate and authorized 315
35 treatment instituted by any accredited hospital, educational 316

1 institution, charitable foundation, or federal, state or 317
2 local governmental agency, and which is intended to provide 318
3 that individual with controlled substances sufficient to 319
4 maintain that individual's or any other individual's physical
5 or psychological addiction, habitual or customary use, 320
6 dependence, or diversion of that controlled substance is not 321
7 a prescription within the meaning and intent of this Act; and 322
8 the person issuing it, shall be subject to the penalties 323
9 provided for violations of the law relating to controlled 324
10 substances.

11 (i) A practitioner shall not preprint or cause to be 326
12 preprinted a prescription for any controlled substance; nor 327
13 shall any practitioner issue, fill or cause to be issued or 328
14 filled, a preprinted prescription for any controlled 329
15 substance. 330

THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT

<u>Paragraph</u>	<u>Section</u>	<u>Section Heading</u>	<u>Page</u>
1001	1	Short Title	219
1002	2	Applicability	219
1003	3	Definitions	219
1003.01	3.01	Agency	219
1003.02	3.02	Contested Case	220
1003.04	3.04	License	220
1003.05	3.05	Licensing	220
1003.06	3.06	Party	220
1003.07	3.07	Person	220
1003.08	3.08	Rate-making or Rate-making Activities	220
1003.09	3.09	Rule	220
1003.10	3.10	Small Business ⁵	220
1004	4	Adoption of Rules: Public Information, Availability of Rules	221
1004.01	4.01	Required Rules	221
1004.02	4.02	Standards for Discretion ⁵	222
1004.03	4.03	Small Business Flexibility ⁵	222
1005	5	Procedure for Rulemaking	222
1005.01	5.01	General Rulemaking	223
1005.02	5.02	Emergency Rulemaking	224
1005.03	5.03	Peremptory Rulemaking	225
1006	6	Filing of Rules ⁶	225
1006.01	6.01	Form and Publication of Notices ⁷	226
1007	7	Publication of Rules	226
1007.01	7.01	Certification	228
1007.02	7.02	Joint Committee on Administrative Rules ¹	229
1007.03	7.03	Oaths; Affidavits; Subpoena	230
1007.04	7.04	Powers of Joint Committee	230
1007.05	7.05	Responsibilities of Joint Committee	231
1007.06	7.06	Joint Committee Objection to Proposed Rulemaking	231
1007.06a	7.06a	Legislative Veto of Proposed Rulemaking ¹	232
1007.07	7.07	Joint Committee Objection to Existing Rule	233
1007.07a	7.07a	Legislative Suspension of Emergency and Peremptory Rules ¹	234
1007.08	7.08	Periodic Evaluation by Joint Committee	235
1007.09	7.09	Joint Committee Rulemaking	235
1007.10	7.10	Report by Joint Committee	235
1008	8	Petition for Adoption of Rules ²	235
1009	9	Declaratory Rulings by Agency ²	236
1010	10	Contested Cases; Notices; Hearing	236
1011	11	Record in Contested Cases	236
1012	12	Rules of Evidence; Official Notice	236
1013	13	Proposal for Decision	237
1014	14	Decisions and Orders	237
1014.1	14.1	Expenses of Contesting Agency Action ³	238

<u>Paragraph</u>	<u>Section</u>	<u>Section Heading</u>	<u>Page</u>
1015	15	Ex Parte Consultations	238
1016	16	Licenses	238
1017	17	Rate-making	239
1018	18	Waiver	239
1020	20	Severability	239
1021	21	Effective Date	239

Notes on Effect of Amendments Enacted in 1981

(see discussion on pages 19-23.)

¹ Amended by PA 82-372 (HB 821), effective September 2, 1981.

² Amended by PA 82-727 "Department of Revenue Sunshine Act" (HB 1049), effective November 12, 1981.

³ Added by PA 82-670 "Equal Access to Justice Act" (SB 355), effective January 1, 1982.

⁴ Amended by PA 82-242 (SB 514) and PA 82-492 "Regulatory Flexibility Act" (SB 546), effective January 1, 1982.

⁵ Added by PA 82-492 "Regulatory Flexibility Act" (SB 546), effective January 1, 1982.

⁶ Amended by PA 82-298 (HB 1209), effective January 1, 1982.

⁷ Amended by PA 82-689 (SB 508), effective July 1, 1982.

See Table Three on pages 26-27 for a summary of all the Public Acts amending the Illinois Administrative Procedure Act.

THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT

(Codified by West Publishing Company in Illinois Revised Statutes
at chapter 127, paragraphs 1001-1021.)

Section 1. SHORT TITLE) This Act shall be known and may be cited as "The Illinois Administrative Procedure Act." (PA 79-1083, effective September 22, 1975)

Section 2. APPLICABILITY) This Act applies to every agency as defined herein. Beginning January 1, 1978 in case of conflict between the provisions of this Act and the Act creating or conferring power on an agency, this Act shall control. However if an agency has existing procedures on July 1, 1977 specifically for contested cases or licensing those existing provisions control, except that this exception respecting contested cases and licensing does not apply if the Act creating or conferring power on the agency adopts by express reference the provision of this Act. Where the Act creating or conferring power on an agency establishes administrative procedures not covered by this Act, such procedures shall remain in effect.

The provisions of this Act shall not apply to (1) preliminary hearings, investigations or practices where no final determinations affecting State funding are made by the State Board of Education, (2) State Board of Education statements, guidelines or policies which do not have the force of law, (3) legal opinions issued under Section 2-3.7 of The School Code, and (4) as to State colleges and universities, their disciplinary and grievance proceedings, academic irregularity and capricious grading proceedings, and admission standards and procedures and (5) the class specifications for positions and individual position descriptions prepared and maintained pursuant to the "Personnel Code"; however such specifications shall be made reasonably available to the public for inspection and copying. Neither shall the provisions of this Act apply to hearings under Section 20 of the "Uniform Disposition of Unclaimed Property Act." (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 81-1514, effective January 1, 1981)

Section 3. DEFINITIONS) As used in this Act, unless the context otherwise requires, the terms specified in Section 3.01 through 3.09 have the meanings ascribed to them in those Sections. (PA 79-1083)

Section 3.01. AGENCY) "Agency" means each officer, board, commission and agency created by the Constitution, whether in the executive, legislative, or judicial branch of State government, but other than the circuit court; each officer, department, board, commission, agency, institution, authority, university, body politic and corporate of the State; and each administrative unit or corporate outgrowth of the State government which is created by or pursuant to statute, other than units of local government and their officers, school districts and boards of election commissioners; each administrative unit or corporate outgrowth of the above and as may be created by executive order of the Governor. However, "agency" does not include:

- (a) the House of Representatives and Senate, and their respective standing and service committees;
- (b) the Governor; and
- (c) the justices and judges of the Supreme and Appellate Courts.

No entity shall be considered an "agency" for the purposes of this Act unless authorized by law to make rules or to determine contested cases. (PA 79-1083; Amended by PA 80-1457, effective January 1, 1979)

Section 3.02. CONTESTED CASE) "Contested case" means an adjudicatory proceeding, not including rate-making, rule-making, quasi-legislative, informational or similar proceedings, in which the individual legal rights, duties or privileges of a party are required by law to be determined by an agency only after an opportunity for hearing. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 3.03. HEARING EXAMINER) "Hearing examiner" means the presiding officer or officers at the initial hearing before each agency and each continuation thereof. (PA 79-1083)

Section 3.04. LICENSE) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes. (PA 79-1083)

Section 3.05. LICENSING) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license. (PA 79-1083)

Section 3.06. PARTY) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party. (PA 79-1083)

Section 3.07. PERSON) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency. (PA 79-1083)

Section 3.08. RATE-MAKING OR RATE-MAKING ACTIVITIES) "Rate-making" or "Rate-making activities" means the establishment or review of or other exercise of control over the rates or charges for the products or services of any person, firm or corporation operating or transacting any business in this State. (PA 79-1083)

Section 3.09. RULE) "Rule" means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entities outside the agency, (b) informal advisory rulings issued pursuant to Section 9, (c) intra-agency memoranda or (d) the prescription of standardized forms. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 3.10. SMALL BUSINESS) For the purpose of this Act, "small business" means a concern, including its affiliates, which is independently owned and operated, not dominant in its field and which employs fewer than 50

full-time employees or which has gross annual sales of less than \$4 million. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations. (Added by PA 82-492, effective January 1, 1982)

Section 4. ADOPTION OF RULES: PUBLIC INFORMATION, AVAILABILITY OF RULES) (a) In addition to other rule-making requirements imposed by law, each agency shall:

1. adopt rules of practice setting forth the nature and requirements of all formal hearings;
2. make available for public inspection all rules adopted by the agency in the discharge of its functions.

(b) Each agency shall make available for public inspection all final orders, decisions and opinions, except those deemed confidential by state or federal statute and any trade secrets.

(c) No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

(d) Rule-making which creates or expands a State mandate on units of local government, school districts, or community college districts is subject to the State Mandates Act. The required Statement of Statewide Policy Objectives shall be published in the Illinois Register at the time that the first notice under Section 5.01 is published or when the rule is published under Section 5.02 or 5.03. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 81-1562, effective January 16, 1981)

Section 4.01 REQUIRED RULES) (a) Each agency shall maintain as rules the following:

1. a current description of the agency's organization with necessary charts depicting same;
2. the current procedures on how the public can obtain information or make submissions or requests on subjects, programs, and activities of the agency;
3. tables of contents, indices, reference tables, and other materials to aid users in finding and using the agency's collection of rules currently in force; and
4. a current description of the agency's rule-making procedures with necessary flow charts depicting same.

(b) The rules required to be filed by this Section may be adopted, amended, or repealed and filed as provided in this Section in lieu of any other provisions or requirements of this Act.

The rules required by this Section may be adopted, amended, or repealed by filing a certified copy with the Secretary of State as provided by paragraphs (a) and (b) of Section 6, and may become effective immediately. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 4.02. STANDARDS FOR DISCRETION) Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. Such standards shall be stated as precisely and clearly as practicable under the conditions, to inform fully those persons affected. (Added by PA 80-1129, effective July 1, 1980)

Section 4.03. SMALL BUSINESS FLEXIBILITY) When an agency proposes a new rule, or an amendment to an existing rule, which may have an impact on small businesses, the agency shall do each of the following: (a) The agency shall consider each of the following methods for reducing the impact of the rulemaking on small businesses. The agency shall reduce the impact by utilizing one or more of the following methods, if it finds that the methods are legal and feasible in meeting the statutory objectives which are the basis of the proposed rulemaking.

(1) Establishing less stringent compliance or reporting requirements in the rule for small businesses.

(2) Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.

(3) Consolidate or simplify the rule's compliance or reporting requirements for small businesses.

(4) Establish performance standards to replace design or operational standards in the rule for small businesses.

(5) Exempt small businesses from any or all requirements of the rule.

(b) Prior to or during the notice period required under Section 5.01(a) of this Act, the agency shall provide an opportunity for small businesses to participate in the rulemaking process. The Agency shall utilize one or more of the following techniques. These techniques are in addition to other rulemaking requirements imposed by this Act or by any other Act.

(1) The inclusion in any advance notice of possible rulemaking of a statement that the rule may have an impact on small businesses.

(2) The publication of a notice of rulemaking in publications likely to be obtained by small businesses.

(3) The direct notification of interested small businesses.

(4) The conduct of public hearings concerning the impact of the rule on small businesses.

(5) The use of special hearing or comment procedures to reduce the cost or complexity of participation in the rulemaking by small businesses.

(c) Prior to the notice period required under Section 5.01(a) of this Act, the agency shall notify the Small Business Office of the Department of Commerce and Community Affairs when rules affect businesses. The Small Business Office may advise or assist agencies in the preparation of initial and final regulatory flexibility analyses required under this Act. The Office may also advise or assist agencies in meeting the requirements of paragraph (b) of this Section. (Added by PA 82-492, effective January 1, 1982)

Section 5. PROCEDURE FOR RULE-MAKING) (a) Prior to the adoption, amendment or repeal of any rule, each agency shall accomplish the actions required by Sections 5.01, 5.02 or 5.03, whichever is applicable.

(b) No action by any agency to adopt, amend or repeal a rule after this of non-compliance with the procedural requirements of this Section must be commenced within 2 years from the effective date of the rule.

(c) The notice and publication requirements of this Section do not apply to a matter relating solely to agency management, personnel practices, or to public property, loans or contracts. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 5.01. GENERAL RULEMAKING) In all rulemaking to which Sections 5.02 and 5.03 do not apply, each agency shall:

(a) give at least 45 days' notice of its intended action to the general public. This first notice period shall commence on the first day the notice appears in the Illinois Register. The first notice shall include:

1. The text of the proposed rule, or the old and new materials of a proposed amendment, or the text of the provision to be repealed;

2. The specific statutory citation upon which the proposed rule, the proposed amendment to a rule or the proposed repeal of a rule is based and is authorized;

3. A complete description of the subjects and issues involved;

4. For all proposed rules and proposed amendments to rules, an initial regulatory flexibility analysis, which shall contain a description of the types of small businesses subject to the rule; a brief description of the proposed reporting, bookkeeping, and other procedures required for compliance with the rule; and a description of the types of professional skills necessary for compliance; and

5. The time, place and manner in which interested persons may present their views and comments concerning the proposed rulemaking.

During the first notice period, the agency shall provide all interested persons who submit a request to comment within the first 14 days of the notice period reasonable opportunity to submit data, views, arguments or comments, which may, in the discretion of the agency, be submitted either orally or in writing or both. The notice published in the Illinois Register shall indicate the manner selected by the agency for such submissions. The agency shall consider all submissions received.

The agency shall hold a public hearing on the proposed rulemaking, during the first notice period, in the following cases: (1) the agency finds that a public hearing would facilitate the submission of views and comments which might not otherwise be submitted; (2) the agency receives a request for a public hearing, within the first 14 days after publication of the notice of proposed rulemaking in the Illinois Register, from 25 interested persons, an association representing at least 100 interested persons, the Governor, the Joint Committee on Administrative Rules, or a unit of local government which may be affected. At the public hearing, the agency shall allow interested persons to present views and comments on the proposed rulemaking. Such a public hearing in response to a request for a hearing may not be held less than 20 days after the publication of the notice of proposed rulemaking in the Illinois Register, unless notice of the public hearing is included in the notice of proposed rulemaking. A public hearing on proposed rulemaking may not be held less than 10 days before submission of the notice required under paragraph (b) of this Section to the Joint Committee on Administrative Rules. Each agency may prescribe reasonable rules for the conduct of public hearings

on proposed rulemaking to prevent undue repetition at such hearings. Such hearings must be open to the public and recorded by stenographic or mechanical means.

(b) provide up to 45 days additional notice of the proposed rulemaking to the Joint Committee on Administrative Rules. The second notice period shall commence on the day written notice is received by the Joint Committee, and shall expire 45 days thereafter unless prior to that time the agency shall have received a statement of objection from the Joint Committee, or notification from the Joint Committee that no objection will be issued. The written notice to the Joint Committee shall include: (1) the text and location of any changes made to the proposed rulemaking during the first notice period; (2) for all proposed rules and proposed amendments to rules, a final regulatory flexibility analysis, which shall contain a summary of issues raised by small businesses during the first notice period; and a description of actions taken on any alternatives to the proposed rule suggested by small businesses during the first notice period, including reasons for rejecting any alternatives not utilized; and (3) if written request has been made by the Joint Committee within 30 days after initial notice appears in the Illinois Register pursuant to Paragraph (a) of this Section, an analysis of the economic and budgetary effects of the proposed rulemaking. After commencement of the second notice period, no substantive change may be made to a proposed rulemaking unless it is made in response to an objection or suggestion of the Joint Committee. The agency shall also send a copy of the final regulatory flexibility analysis to each of the small businesses which have presented views or comments on the proposed rulemaking during the first notice period and to any interested person who requests a copy during the first notice period. The agency may charge a reasonable fee for providing such copies to cover postage and handling costs.

(c) after the expiration of 45 days, after notification from the Joint Committee that no objection will be issued, or after response by the agency to a statement of objections issued by the Joint Committee, whichever is applicable, the agency shall file, pursuant to Section 6 of this Act, a certified copy of each rule, modification, or repeal of any rule adopted by it, which shall be published in the Illinois Register. Each rule hereafter adopted under this Section is effective upon filing, unless a later effective date is required by statute or is specified in the rule.

(d) No rule or modification or repeal of any rule may be adopted, or filed with the Secretary of State, more than one year after the date the first notice period for the rulemaking under paragraph (a) commenced. Any period during which the rulemaking is prohibited from being filed under Section 7.06a shall not be considered in calculating this one-year time period. This paragraph (d) applies to any rule or modification or repeal of any rule which has not been filed with the Secretary of State prior to the effective date of this amendatory Act of 1981. (Added by PA 81-1044, effective October 1, 1979; Amended by PA 82-242, effective January 1, 1982; Amended by PA 82-492, effective January 1, 1982)

Section 5.02 EMERGENCY RULEMAKING) "Emergency" means the existence of any situation which any agency finds reasonably constitutes a threat to the public interest, safety or welfare. Where any agency finds that an emergency exists which requires adoption of a rule upon fewer days than is required by Section 5.01, and states in writing its reasons for that finding, the

agency may adopt an emergency rule without prior notice or hearing, upon filing a notice of emergency rulemaking with the Secretary of State pursuant to Section 6.01 of this Act. Such notice shall include the text of the emergency rule and shall be published in the Illinois Register. Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing pursuant to Section 6, or at a stated date less than 10 days thereafter. The agency's finding and a statement of the specific reasons therefor shall be filed with the rule. The agency shall take reasonable and appropriate measures to make emergency rules known to the persons who may be affected by them.

An emergency rule may be effective for a period of not longer than 150 days, but the agency's authority to adopt an identical rule under Section 5.01 of this Act is not precluded. No emergency rule may be adopted more than once in any 24 month period. Two or more emergency rules having substantially the same purpose and effect shall be deemed to be a single rule for purposes of this Section. (Added by PA 81-1044, effective October 1, 1979)

Section 5.03. PEREMPTORY RULEMAKING) "Peremptory rulemaking" means any rulemaking which is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions which preclude compliance with general rulemaking requirements imposed by Section 5.01 and which preclude the exercise of discretion by the agency as to the content of the rule it is required to adopt. Where any agency finds that peremptory rulemaking is necessary and states in writing its reasons for that finding, the agency may adopt peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State pursuant to Section 6.01 of this Act. Such notice shall be published in the Illinois Register. A rule adopted under the peremptory rulemaking provisions of this Section becomes effective immediately upon filing with the Secretary of State and in the agency's principal office, or at a date required or authorized by the relevant federal law, rules and regulations, or court order, as stated in the notice of rulemaking. Notice of rulemaking under this Section shall be published in the Illinois Register, and shall specifically refer to the appropriate state or federal court order or federal law, rules and regulations, and shall be in such form as the Secretary of State may reasonably prescribe by rule. The agency shall file the notice of peremptory rulemaking within 30 days after a change in rules is required. (Added by PA 81-1044, effective October 1, 1979)

Section 6. FILING OF RULES) (a) Each agency shall file in the office of the Secretary of State and in the agency's principal office a certified copy of each rule and modification or repeal of any rule adopted by it. The Secretary of State and the agency shall each keep a permanent register of the rules open to public inspection.

(b) Concurrent with the filing of any rule pursuant to this Section, the filing agency shall submit to the Secretary of State for publication in the next available issue of the Illinois Register a notice of adopted rules. Such notice shall include:

1. The text of the adopted rule, which shall include: if the material is a new rule, the full text of the new rule; or if the material is an amendment to a rule or rules, the full text of the rule or rules as amended; or if the material is a repealer, such notice of repeal.

2. The name, address and telephone number of an individual who will be available to answer questions and provide information to the public concerning the adopted rules.

3. Such other information as the Secretary of State may by rule require in the interest of informing the public. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1979; Amended by PA 81-1044, effective October 1, 1979; Amended by PA 82-298, effective January 1, 1982)

Section 6.01. FORM AND PUBLICATION OF NOTICES) (a) The Secretary of State may prescribe reasonable rules concerning the form of documents to be filed with him, and may refuse to accept for filing such certified copies as are not in compliance with such rules. In addition, the Secretary of State shall publish and maintain the Illinois Register and may prescribe reasonable rules setting forth the manner in which agencies shall submit notices required by this Act for publication in the Illinois Register. The Illinois Register shall be published at least once each week on the same day unless such day is an official State holiday in which case the Illinois Register shall be published on the next following business day and sent to subscribers who subscribe for the publication with the Secretary of State. The Secretary of State may charge a subscription price to subscribers that covers mailing and publication costs.

(b) If an agency proposes or adopts federal rules or portions thereof, the requirement that the full text thereof be filed with the Secretary of State and published in the Illinois Register shall be satisfied by including in the text of the proposed or adopted rules a statement that the agency proposes to adopt or is adopting such federal rules with a specific citation to the Federal Register or Code of Federal Regulations where the text appears. If any agency proposes or adopts as rules the standards or guidelines, or portions thereof, of any professional, trade or other association or entity, the requirement that the full text thereof be filed with the Secretary of State and published in the Illinois Register shall be satisfied by including in the text of the proposed or adopted rules a specific citation to the standards or guidelines and filing with the Secretary of State a photographic or other reproduction of such standards or guidelines. However, if the set of standards or guidelines is available in the Illinois State Library, the Secretary of State shall waive the requirement of filing a photographic or other reproduction of such standards or guidelines. This Section shall not permit an agency to adopt future amendments in the rules, standards or guidelines without following the procedures required by this Act. Adoption by reference under this Section is limited to the adoption of rules, standards or guidelines as of a certain date which the agency shall specify when the text is filed with the Secretary of State and published in the Illinois Register. Nothing in this Section shall relieve the agency of the requirement that the full text of adopted rules, including federal rules, standards and guidelines adopted by reference as provided in this Section, be filed in the agency's principal office under Section 6 of this Act. (Added by PA 81-1044, effective October 1, 1979; Amended by PA 82-689, effective July 1, 1982)

Section 7. PUBLICATION OF RULES) (a) The Secretary of State shall, by rule, prescribe a uniform system for the codification of rules on or before July 1, 1980. The Secretary of State shall also, by rule, establish a schedule for compliance with the uniform codification system on or before October 1, 1980. Such schedule may be by sections of the codification system and shall require approximately one-fourth of the rules to be converted to the codification

system by each October 1, starting in 1981 and ending in 1984. All rules on file with the Secretary of State and in effect on October 1, 1984, shall be in compliance with the uniform system for the codification of rules. The Secretary of State shall not adopt any codification system or schedule under this subsection without the approval of the Joint Committee on Administrative Rules. Approval by the Joint Committee shall be conditioned solely upon establishing that the proposed codification system and schedule are compatible with existing electronic data processing equipment and programs maintained by and for the General Assembly. Nothing in this Section shall prohibit an agency from adopting rules in compliance with the codification system earlier than specified in the schedule.

(b) If no substantive changes are made by the agency in amending existing rules to comply with the codification system, such codified rules may be adopted until October 1, 1984, without requiring notice or publication of the text of rules pursuant to Section 5. In such a case, the publication requirement shall be satisfied by the publication in the Illinois Register of a notice stating that the agency has adopted the rules to comply with the codification system, that no substantive changes have been made in the rules and that the State Library has reviewed and approved the codification of the rules. The notice shall include the current names and numbers of the rules being codified, an outline of the headings of the sections of the rules as codified and may also include a table indicating the relationship between any rule numbers previously used by the agency and the numbering system of the codified rules. The agency shall provide the text of such rules as codified to the State Library for review and necessary changes and recommendations at least 30 days prior to the publication of such notice. Whenever the codification of an emergency or peremptory rule is changed subsequent to its publication as adopted in the Illinois Register, a notice of such change, in the manner set forth in this subsection, shall be published in the next available issue of the Illinois Register. Such a change in the rule's codification shall not affect its validity or the date upon which it became effective.

(c) Each rule proposed in compliance with the codification system shall be reviewed by the State Library under the Secretary of State prior to the expiration of the public notice period provided by Section 5.01 (a) of this Act or prior to the publication of the notice required under subsection (b) of this section. The State Library shall cooperate with agencies in its review to insure that the purposes of the codification system are accomplished. The State Library shall have the authority to make changes in the numbering and location of the rule in the codification scheme, providing such changes do not affect the meaning of the rules. The State Library may recommend changes in the sectioning and headings proposed by the agency and suggest grammatical and technical changes to correct errors. The State Library may add notes concerning the statutory authority, dates proposed and adopted and other similar notes to the text of the rules, if such notes are not supplied by the agency. This review by the State Library shall be for the purpose of insuring the uniformity of and compliance with the codification system. The State Library shall prepare indexes by agency, subject matter, and statutory authority and any other necessary indexes, tables and other aids for locating rules to assist the public in the use of the Code.

(d) The State Library shall make available to the agency and the Joint Committee on Administrative Rules copies of the changes in the numbering and

location of the rule in the codification scheme, the recommended changes in the sectioning and headings, and the suggestions made concerning the correction of grammatical and technical errors or other suggested changes. The agency shall in the notice required by Section 5.01(b) of this Act, or if such notice is not required, at least 10 days prior to the publication of the notice required under subsection (b) of this Section, provide to the Joint Committee a response to the recommendations of the State Library including any reasons for not adopting the recommendations.

(e) In the case of reorganization of agencies, transfer of functions between agencies, or abolishment of agencies by executive order or law, which affects rules on file with the Secretary of State, the State Library shall notify the Governor, the Attorney General, and the agencies involved of the effects upon such rules on file. If the Governor or the agencies involved do not respond to the State Library's notice within 45 days by instructing the State Library to delete or transfer the rules, the State Library may delete or place such rules under the appropriate agency for the purpose of insuring the consistency of the codification scheme and shall notify the Governor, the Attorney General and the agencies involved.

(f) The Secretary of State shall publish an Illinois Administrative Code on or before January 1, 1985, and shall update each section of the Code at least annually thereafter. Such Code shall contain the complete text of all rules of all State agencies filed with his office and effective on October 1, 1984, or later and the indexes, tables, and other aids for locating rules prepared by the State Library. The Secretary of State shall design the Illinois Register to supplement such Code. The Secretary of State shall make copies of the Code available generally at a price covering publication and mailing costs.

(g) The publication of a rule in the Code or in the Illinois Register as an adopted rule shall establish a rebuttable presumption that the rule was duly filed and that the text of the rule as published in the Code is the text of the rule adopted. Publication of the text of a rule in any other location whether by the agency or some other person shall not be taken as establishing such presumption. Judicial notice shall be taken of the text of each rule published in the Code or Register.

(h) The codification system, the indexes, tables, and other aids for locating rules prepared by the State Library, notes and other materials developed under this Section in connection with Administrative Code shall be the property of the State. No person may attempt to copyright or publish for sale such materials except the Secretary of State as provided in this Section. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 81-1348, effective July 16, 1980)

Section 7.01. CERTIFICATION) (a) Beginning January 1, 1978, whenever a rule, or modification or repeal of any rule, is filed with the Secretary of State, the Secretary of State within three working days after such filing shall send a certified copy of such rule, modification or repeal to the Joint Committee on Administrative Rules established in Section 7.02.

(b) Any rule on file with the Secretary of State on January 1, 1978 shall be void 60 days after the date unless within such 60 day period the issuing agency certifies to the Secretary of State that the rule is currently in effect.

Within 45 days after the receipt of any certification pursuant to this sub-section (b), the Secretary of State shall send the Joint Committee on Administrative Rules established in Section 7.02 a copy of each agency's certification so received along with a copy of the rules covered by the certification. (Added by PA 80-1035, effective September 27, 1977)

Section 7.02. JOINT COMMITTEE ON ADMINISTRATIVE RULES) (a) The Joint Committee on Administrative Rules is hereby created. The Joint Committee shall be composed of 16 members, 4 members appointed by the President of the Senate and 4 by the Senate Minority Leader, and 4 members appointed by the Speaker of the House of Representatives and 4 by the House Minority Leader.

Members of the Joint Committee shall be appointed during the month of July of each odd numbered year for 2 year terms beginning August 1, and until their successors are appointed and qualified. In the event of a death of a member or if a member ceases to be a member of the General Assembly a vacancy shall exist. Vacancies shall be filled for the time remaining of the term in the same manner as the original appointments. All appointments shall be in writing and filed with the Secretary of State as a public record.

(b) The Joint Committee shall organize during the month of September each odd numbered year by electing a Chairman and such other officers as it deems necessary. The Chairmanship of the Joint Committee shall be for a 2 year term and may not be filled in 2 successive terms by persons of the same house of the General Assembly. Members of the Joint Committee shall serve without compensation, but shall be reimbursed for expenses. The Joint Committee shall hold monthly meetings and may meet oftener upon the call of the Chairman or 4 members. A quorum of the Joint Committee consists of a majority of the members.

(c) When feasible the agenda of each meeting of the Joint Committee shall be submitted to the Secretary of State to be published at least 5 days prior to the meeting in the Illinois Register. The Joint Committee may also weekly, or as often as necessary, submit for publication in the Illinois Register lists of the dates on which notices under Section 5.01 of this Act were received and the dates on which the proposed rulemakings will be considered. The provisions of this subsection shall not prohibit the Joint Committee from acting upon an item that was not contained in the published agenda.

(d) The Joint Committee shall appoint an Executive Director who shall be the staff director. The Executive Director shall receive a salary to be fixed by the Joint Committee.

The Executive Director shall be authorized to employ and fix the compensation of such necessary professional, technical and secretarial staff and prescribe the duties of such staff.

(e) A permanent office of the Joint Committee shall be in the State Capitol Complex wherein the Space Needs Commission shall provide suitable offices.

(f) The Joint Committee may charge reasonable fees for copies of documents or publications to cover the cost of copying or printing. However, the Joint Committee shall provide copies of documents or publications without cost to agencies which are directly affected by recommendations or findings included in such documents or publications. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 82-372, effective September 2, 1981)

Section 7.03. OATHS; AFFIDAVITS; SUBPOENA) (a) The Executive Director of the Joint Committee or any person designated by him may administer oaths or affirmations, take affidavits or depositions of any person.

(b) The Executive Director, upon approval of majority vote of the Joint Committee, or the presiding officers may subpoena and compel the attendance before the Joint Committee and examine under oath any person, or the production for the Joint Committee of any records, books, papers, contracts or other documents.

If any person fails to obey a subpoena issued under this Section, the Joint Committee may apply to any circuit court to secure compliance with the subpoena. The failure to comply with the order of the court issued in response thereto shall be punished as a contempt. (Added by PA 80-1035, effective September 27, 1977)

Section 7.04. POWERS OF JOINT COMMITTEE) The Joint Committee shall have the following powers under this Act:

1. The function of the Joint Committee shall be the promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules. Such function shall be advisory only, except as provided in Sections 7.06a and 7.07a.

2. The Joint Committee may undertake studies and investigations concerning rule-making and agency rules.

3. The Joint Committee shall monitor and investigate compliance of agencies with the provisions of this Act, make periodic investigations of the rule-making activities of all agencies, and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy.

4. Hearings and investigations conducted by the Joint Committee under this Act may be held at such times and places within the State as such Committee deems necessary.

5. The Joint Committee shall have the authority to request from any agency an analysis of the:

a. effect of a new rule, amendment or repealer, including any direct economic effect on the persons regulated by the rule; any anticipated effect on the proposing agency's budget and the budgets of other State agencies; and any anticipated effects on State revenues;

b. agency's evaluation of the submissions presented to the agency pursuant to Section 5.01 of this Act;

c. a description of any modifications from the initially published proposal made in the finally accepted version of the intended rule, amendment or repealer.

6. Failure of the Joint Committee to object to any proposed rule, amendment, or repealer or any existing rule shall not be construed as implying direct or indirect approval of the rule or proposed rule, amendment, or

repealer by the Joint Committee or the General Assembly. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 80-1044, effective October 1, 1978; Amended by PA 81-1035, effective January 1, 1980; Amended by PA 81-1514, effective January 1, 1981)

Section 7.05. RESPONSIBILITIES OF JOINT COMMITTEE) The Joint Committee shall have the following responsibilities under this Act:

1. The Joint Committee shall conduct a systematic and continuing study of the rules and rule-making process of all state agencies, including those agencies not covered in Section 3.01 of this Act, for the purpose of improving the rule-making process, reducing the number and bulk of rules, removing redundancies and unnecessary repetitions and correcting grammatical, typographical and like errors not affecting the construction or meaning of the rules, and it shall make recommendations to the appropriate affected agency.

2. The Joint Committee shall review the statutory authority on which any administrative rule is based.

3. The Joint Committee shall maintain a review program, to study the impact of legislative changes, court rulings and administrative action on agency rules and rule-making.

4. The Joint Committee shall suggest rulemaking of an agency whenever the Joint Committee, in the course of its review of the agency's rules under this Act, determines that the agency's rules are incomplete, inconsistent or otherwise deficient. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 7.06. JOINT COMMITTEE OBJECTION TO PROPOSED RULE-MAKING) (a) The Joint Committee may examine any proposed rule, amendment to a rule, and repeal of a rule for the purpose of determining whether the proposed rule, amendment to a rule, or repeal of a rule is within the statutory authority upon which it is based, whether the rule, amendment to a rule or repeal of a rule is in proper form and whether the notice was given prior to its adoption, amendment, or repeal and was sufficient to give adequate notice of the purpose and effect of the rule, amendment or repeal.

(b) If the Joint Committee objects to a proposed rule, amendment to a rule, or repeal of a rule, it shall certify the fact to the issuing agency and include with the certification a statement of its specific objections.

(c) If within 45 days after notice of proposed rulemaking has been received by the Joint Committee, the Joint Committee certifies its objections to the issuing agency then that agency shall within 90 days of receipt of the statement of objection:

1. modify the proposed rule, amendment or repealer to meet the Joint Committee's objections;

2. withdraw the proposed rule, amendment, or repealer in its entirety, or;

3. refuse to modify or withdraw the proposed rule, amendment or repealer.

(d) If an agency elects to modify a proposed rule, amendment or repealer to meet the Joint Committee's objections, it shall make such modifications as are necessary to meet the objections and shall resubmit the rule, amendment or repealer to the Joint Committee. In addition, the agency shall submit a notice of its election to modify the proposed rule, amendment or repealer to meet the

Joint Committee's objections to the Secretary of State, which notice shall be published in the first available issue of the Illinois Register, but the agency shall not be required to conduct a public hearing. If the Joint Committee determines that the modifications do not remedy the Joint Committee's objections, it shall so notify the agency in writing and shall submit a copy of such notification to the Secretary of State for publication in the next available issue of the Illinois Register. In addition, the Joint Committee may recommend legislative action as provided in subsection (g) for agency refusals.

(e) If an agency elects to withdraw a proposed rule, amendment or repealer as a result of the Joint Committee's objections, it shall notify the Joint Committee, in writing, of its election and shall submit a notice of the withdrawal to the Secretary of State which shall be published in the next available issue of the Illinois Register.

(f) Failure of an agency to respond to the Joint Committee's objections to a proposed rule, amendment or repealer, within the time prescribed in subsection (c) shall constitute withdrawal of the proposed rule, amendment or repealer in its entirety. The Joint Committee shall submit a notice to that effect to the Secretary of State which shall be published in the next available issue of the Illinois Register and the Secretary of State shall refuse to accept for filing a certified copy of such proposed rule, amendment or repealer under the provisions of Section 6.

(g) If an agency refuses to modify or withdraw the proposed rule, amendment or repealer so as to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State which shall be published in the next available issue of the Illinois Register. If the Joint Committee decides to recommend legislative action in response to an agency refusal, then the Joint Committee shall have drafted and have introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee.

(h) No rule, amendment or repeal of a rule shall be accepted by the Secretary of State for filing under Section 6, if such rule-making is subject to this Section, until after the agency has responded to the objections of the Joint Committee as provided in this Section. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 7.06a. LEGISLATIVE VETO OF PROPOSED RULEMAKING) (a) If the Joint Committee determines that adoption and effectiveness of a proposed rule, amendment or repealer or portion of a proposed rule, amendment or repealer by an agency would be objectionable under any of the standards for the Joint Committee's review specified in Sections 7.04, 7.05, 7.06, 7.07 or 7.08 of this Act and would constitute a serious threat to the public interest, safety or welfare, the Joint Committee may at any time prior to the taking effect of such proposed rule, amendment or repealer issue a statement to that effect. Such statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of such statement shall be transmitted to the proposing agency and to the Secretary of State for publication in the next available issue of the Illinois Register.

(b) The proposed rule, amendment or repealer or the portion of the proposed rule, amendment or repealer to which the Joint Committee has issued a statement under subsection (a) shall not be accepted for filing by the Secretary of State. The agency may not enforce or invoke for any reason a proposed rule, amendment or repealer or any portion thereof which is prohibited from being filed by this subsection during this 180 day period.

(c) The Joint Committee shall, as soon as practicable after the issuance of a statement under subsection (a), introduce in either house of the General Assembly a Joint resolution stating that the General Assembly desires to continue the prohibition of the proposed rule, amendment or repealer or the portion thereof to which the statement was issued from being filed and taking effect. The joint resolution shall immediately following its first reading be placed on the calendar for consideration in each house of the General Assembly without reference to a standing committee. If such a joint resolution is passed by both houses of the General Assembly within the 180 day period provided in subsection (b), the agency shall be prohibited from filing the proposed rule, amendment or repealer or the portion thereof and the proposed rule, amendment or repealer or the portion thereof shall not take effect. The Secretary of State shall not accept for filing the proposed rule, amendment or repealer or the portion thereof which the General Assembly has prohibited the agency from filing as provided in this subsection. If the 180 day period provided in subsection (b) expires prior to passage of the joint resolution, the agency may file the proposed rule, amendment or repealer or the portion thereof as adopted and it shall take effect. (Added by PA 81-1514, effective January 1, 1981; Amended by PA 82-372, effective September 2, 1981)

Section 7.07. JOINT COMMITTEE OBJECTION TO EXISTING RULE) (a) The Joint Committee may examine any rule for the purpose of determining whether the rule is within the statutory authority upon which it is based, and whether the rule is in proper form.

(b) If the Joint Committee objects to a rule, it shall, within 5 days of the objection, certify the fact to the adopting agency and include within the certification a statement of its specific objections.

(c) Within 90 days of receipt of the certification, the agency shall:

1. Notify the Joint Committee that it has elected to amend the rule to meet the Joint Committee's objection;
2. Notify the Joint Committee that it has elected to repeal the rule, or;
3. Notify the Joint Committee that it refuses to amend or repeal the rule.

(d) If the agency elects to amend a rule to meet the Joint Committee's objections, it shall notify the Joint Committee in writing and shall initiate rule-making procedures for that purpose by giving notice as required by Section 5 of this Act. The Joint Committee shall give priority to rules so amended when setting its agenda.

(e) If the agency elects to repeal a rule as a result of the Joint Committee objections, it shall notify the Joint Committee, in writing, of its election and shall initiate rule-making procedures for that purpose by giving notice as required by Section 5 of this Act.

(f) If the agency elects to amend or repeal a rule as a result of the Joint Committee objections, it shall complete the process within 180 days after giving notice in the Illinois Register.

(g) Failure of the agency to respond to the Joint Committee's objections to a rule within the time prescribed in subsection (c) shall constitute a refusal to amend or repeal the rule.

(h) If an agency refuses to amend or repeal a rule so as to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State which shall be published in the next available issue of the Illinois Register. If the Joint Committee, in response to an agency refusal, decides to recommend legislative action, then the Joint Committee shall have drafted and have introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 7.07a. LEGISLATIVE SUSPENSION OF EMERGENCY AND PEREMPTORY RULES) (a) If the Joint Committee determines that a rule or portion of a rule adopted under Sections 5.02 or 5.03 of this Act is objectionable under any of the standards for the Joint Committee's review specified in Sections 7.04, 7.05, 7.06, 7.07, or 7.08 of this Act and constitutes a serious threat to the public interest, safety or welfare, the Joint Committee may issue a statement to that effect. Such statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of such statement shall be transmitted to the affected agency and to the Secretary of State for publication in the next available issue of the Illinois Register.

(b) The effectiveness of the rule or the portion of a rule shall be suspended immediately for at least 180 days upon receipt of the certified statement by the Secretary of State. The Secretary of State shall indicate such suspension prominently and clearly on the face of the affected rule or the portion of a rule filed in the Office of the Secretary of State. Rules or portions of rules suspended in accordance with this subsection shall become effective again upon the expiration of 180 days from receipt of the statement by the Secretary of State if the General Assembly does not continue the suspension as provided in subsection (c). The agency may not enforce, nor invoke for any reason, a rule or portion of a rule which has been suspended in accordance with this subsection. During the 180 days, the agency may not file, nor may the Secretary of State accept for filing, any rule having substantially the same purpose and effect as rules or portions of rules suspended in accordance with this subsection.

(c) The Joint Committee shall, as soon as practicable after issuance of a statement under subsection (a), cause to be introduced in either house of the General Assembly a joint resolution stating that the General Assembly desires to continue the suspension of effectiveness of a rule or the portion of the rule to which the statement was issued. The joint resolution shall immediately following its first reading be placed on the calendar for consideration in each house of the General Assembly without reference to a standing committee. If such a joint resolution is passed by both houses of the General Assembly within the

180 day period provided in subsection (b), the rule or the portion of the rule shall be considered repealed and the Secretary of State shall immediately remove such rule or portion of a rule from the collection of effective rules. (Added by PA 81-1514, effective January 1, 1981; Amended by PA 82-372, effective September 2, 1981)

Section 7.08. PERIODIC EVALUATION BY JOINT COMMITTEE) (a) The Joint Committee shall evaluate the rules of each agency at least once every 5 years. The Joint Committee shall develop a schedule for this periodic evaluation. In developing this schedule, the Joint Committee shall group rules by specified areas to assure the evaluation of similar rules at the same time. Such schedule shall include at least the following categories:

1. human resources;
2. law enforcement;
3. energy;
4. environment;
5. natural resources;
6. transportation;
7. public utilities;
8. consumer protection;
9. licensing laws;
10. regulation of occupations;
11. labor laws;
12. business regulation;
13. financial institutions; and
14. government purchasing.

(b) Whenever evaluating any rules as required by this Section, the Joint Committee's review shall include an examination of:

1. organizational, structural and procedural reforms which effect rules or rulemaking;
2. merger, modification, establishment or abolition of regulations;
3. eliminating or phasing out outdated, overlapping or conflicting regulatory jurisdictions or requirements of general applicability; and
4. economic and budgetary effects. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1035, effective January 1, 1980)

Section 7.09. JOINT COMMITTEE RULE-MAKING) The Joint Committee shall have the authority to adopt rules to administer the provisions of this Act relating to the Joint Committee's responsibilities, powers and duties. (Added by PA 80-1035, effective September 27, 1977)

Section 7.10. REPORT BY JOINT COMMITTEE) The Joint Committee shall report its findings, conclusions and recommendations including suggested legislation to the General Assembly by February 1, of each year. (Added by PA 80-1035, effective September 27, 1977)

Section 8. PETITION FOR ADOPTION OF RULES) Any interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration and disposition. If, within 30 days after submission of a petition, the agency has not initiated rule-making proceedings in accordance with Section 5 of this Act, the petition shall be deemed to have been denied. (PA 79-1083)

Section 9. DECLARATORY RULINGS BY AGENCY) Each agency may in its discretion provide by rule for the filing and prompt disposition of petitions or requests for declaratory rulings as to the applicability to the person presenting the petition or request of any statutory provision enforced by the agency or of any rule of the agency. Declaratory rulings shall not be appealable. The agency shall maintain as a public record in the agency's principal office and make available for public inspection and copying any such rulings. The agency shall delete trade secrets or other confidential information from the ruling prior to making it available. (PA 79-1083; Amended by PA 82-727, effective November 12, 1981)

Section 10. CONTESTED CASES; NOTICE; HEARING) (a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. Such notice shall be served personally or by certified or registered mail upon such parties or their agents appointed to receive service of process and shall include:

1. a statement of the time, place and nature of the hearing;
2. a statement of the legal authority and jurisdiction under which the hearing is to be held;
3. a reference to the particular Sections of the statutes and rules involved; and
4. except where a more detailed statement is otherwise provided for by law, a short and plain statement of the matters asserted.

(b) Opportunity shall be afforded all parties to be represented by legal counsel, and to respond and present evidence and argument.

(c) Unless precluded by law, disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. (PA 79-1083)

Section 11. RECORD IN CONTESTED CASES) (a) The record in a contested case shall include:

1. all pleadings (including all notices and responses thereto), motions, and rulings;
2. evidence received;
3. a statement of matters officially noticed;
4. offers of proof, objections and rulings thereon;
5. proposed findings and exceptions;
6. any decision, opinion or report by the hearing examiner;
7. all staff memoranda or data submitted to the hearing examiner or members of the agency in connection with their consideration of the case; and
8. any communication prohibited by Section 14 of this Act, but such communications shall not form the basis for any finding of fact.

(b) Oral proceedings or any part thereof shall be recorded stenographically or by such other means as to adequately insure the preservation of such testimony or oral proceedings and shall be transcribed on request of any party.

(c) Findings of fact shall be based exclusively on the evidence and on matters officially noticed. (PA 79-1083)

Section 12. RULES OF EVIDENCE; OFFICIAL NOTICE) In contested cases: (a) Irrelevant, immaterial or unduly repetitious evidence shall be

excluded. The rules of evidence and privilege as applied in civil cases in the Circuit Courts of this State shall be followed. However, evidence not admissible under such rules of evidence may be admitted (except where precluded by statute) if it is a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form.

(b) Subject to the evidentiary requirements of subsection (a) of this Section, a party may conduct cross-examination required for a full and fair disclosure of the facts.

(c) Notice may be taken of matters of which the Circuit Courts of this State may take judicial notice. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence. (PA 79-1083)

Section 13. PROPOSAL FOR DECISION) Except where otherwise expressly provided by law, when in a contested case a majority of the officials of the agency who are to render the final decision has not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and to present a brief and, if the agency so permits, oral argument, to the agency officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the persons who conducted the hearing or one who has read the record. (PA 79-1083)

Section 14. DECISIONS AND ORDERS) A final decision or order adverse to a party (other than the agency) in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties or their agents appointed to receive service of process shall be notified either personally or by registered or certified mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

A decision by any agency in a contested case under this Act shall be void unless the proceedings are conducted in compliance with the provisions of this Act relating to contested cases except to the extent such provisions are waived pursuant to Section 18 of this Act and except to the extent the agency has adopted its own rules for contested cases as authorized in Section 2 of this Act. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 14.1 EXPENSES OF CONTESTING AGENCY ACTION) (a) In any contested case initiated by any agency which does not proceed to court for judicial review and on any issue where a court does not have jurisdiction to make an award of litigation expenses under Section 41 of the Civil Practice Act, any allegation made by the agency without reasonable cause and found to be untrue shall subject the agency making such allegation to the payment of the reasonable expenses, including reasonable attorney's fees, actually incurred in defending against that allegation by the party against whom the case was initiated.

The claimant shall make his demand for such expenses to the agency. If the claimant is dissatisfied because of the agency's failure to make any award or because of the insufficiency of the agency's award, the claimant may petition the Court of Claims for the amount deemed owed. If allowed any recovery by the Court of Claims, the claimant shall also be entitled to reasonable attorney's fees and the reasonable expenses incurred in making his claim for the expenses incurred in the administrative action.

(b) In any case in which a party has any administrative rule invalidated by a court for any reason, including but not limited to the agency's exceeding its statutory authority in the adoption of the rule, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees. (Added by PA 82-670, effective January 1, 1982)

Section 15. EX PARTE CONSULTATIONS) Except in the disposition of matters which they are authorized by law to entertain or dispose of on an ex parte basis, neither agency members, employees nor hearing examiners shall, after notice of hearing in a contested case or licensing to which the procedures of a contested case apply under this Act, communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or his representative, except upon notice and opportunity for all parties to participate. However, an agency member may communicate with other members of the agency, and an agency member or hearing examiner may have the aid and advice of one or more personal assistants. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 16. LICENSES) (a) When any licensing is required by law to be preceded by notice and opportunity for hearing, the provisions of this Act concerning contested cases shall apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court.

(c) No agency shall revoke, suspend, annul, withdraw, amend materially, or refuse to renew any valid license without first giving written notice to the licensee of the facts or conduct upon which the agency will rely to support its proposed action, and an opportunity for hearing in accordance with the provisions of this Act concerning contested cases. At any such hearing, the licensee shall have the right to show compliance with all lawful requirements for the retention, or continuation or renewal of the license. If, however, the

agency finds that the public interest, safety or welfare imperatively requires emergency action, and if the agency incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action which proceedings shall be promptly instituted and determined.

Any application for renewal of a license which contains required and relevant information, data, material or circumstances which were not contained in an application for the existing license, shall be subject to the provisions of Section 16(a) of this Act. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 17. RATE-MAKING) Every agency which is empowered by law to engage in rate-making activities shall establish by rule, not inconsistent with the provisions of law establishing such rate-making jurisdiction, the practice and procedure to be followed in rate-making activities before such agency. (PA 79-1083)

Section 18. WAIVER) Compliance with any or all of the provisions of this Act concerning contested cases may be waived by written stipulation of all parties. (PA 79-1083)

Section 19. (PA 79-1083; Repealed as of January 1, 1978, by PA 80-1035, effective September 27, 1977)

Section 20. SEVERABILITY) If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are severable. (PA 79-1083)

Section 21. EFFECTIVE DATE) This Act takes effect upon its becoming a law. (PA 79-1083, effective September 22, 1975)

APPENDIX B

OPERATIONAL RULES

		<u>Page</u>
Part 210	General Policies	242
Part 220	Review of Proposed Rulemaking	244
Part 230	Review of Emergency Rulemaking	252
Part 240	Review of Peremptory Rulemaking	257
Part 250	Five-Year Evaluation of all Existing Rules	270
Part 260	Complaint Reviews of Existing Rules	278

RULEMAKINGS AFFECTING THE JOINT COMMITTEE'S OPERATIONAL RULES

<u>Notice of Proposed Rulemaking</u>	<u>Notice of Adopted Rulemaking</u>	<u>Summary</u>	<u>Effective Date</u>
2 Ill. Reg. no. 41, page 1 (10/13/78)	3 Ill. Reg. no. 8, page 18 (2/23/79)	Initial adoption of general policies and rules on review of proposed rulemakings (parts 210 and 220)	4/1/79
3 Ill. Reg. no. 15, page 233 (4/13/79)	3 Ill. Reg. no. 26, page 182 (6/29/79)	Initial adoption of rules on review of emergency and preemptory rulemaking; amendment to general policies (parts 230 and 240)	7/2/79
3 Ill. Reg. no. 23, page 31 (6/8/79)	3 Ill. Reg. no. 34, page 219 (8/24/79)	Initial adoption of rules on reviews of rules based on complaints (part 260)	8/25/79
3 Ill. Reg. no. 26, page 65 (6/29/79)	3 Ill. Reg. no. 34, page 219 (8/24/79)	Initial adoption of rules governing five-year review program (Part 250)	9/1/79
3 Ill. Reg. no. 40, page 77 (10/5/79)	3 Ill. Reg. no. 49, page 230 (12/7/79)	Amendments to initiate second notice period to general policies and rules for review proposed, emergency and preemptory rulemakings (Parts 210-240)	12/10/79
4 Ill. Reg. no. 37, page 419 (9/12/80)	4 Ill. Reg. no. 49, page 166 (12/5/80)	Rewriting for clarity and codification of all of the Joint Committee operational rules (Parts 210-260)	12/1/80
5 Ill. Reg. 379 (1/9/81)	5 Ill. Reg. 5164 (5/8/81)	Amendments to add filing prohibitions and suspensions to rules for review of proposed, emergency and preemptory rulemakings (Parts 220-240)	5/15/81

TITLE 1: GENERAL PROVISIONS
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 210
GENERAL POLICIES

Section	
210.100	Definitions
210.200	Committee Function
210.300	Consultation with Agencies
210.400	Cooperation with the Rules Division
210.500	Use of Subpoenas

AUTHORITY: Authorized by Section 7.09 and implementing Sections 7.02 — 7.10 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1007.02 — 1007.10).

SOURCE: 3 Ill. Reg. no. 8, page 18, effective April 1, 1979; amended at 3 Ill. Reg. no. 49, page 230, effective December 10, 1979; amended and codified at 4 Ill. Reg. no. 49, page 166, effective December 1, 1980.

Section 210.100 Definitions

As used in these rules (Parts 210 through 260):

“Act” means the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1001 et seq., as amended).

“Committee” means the Joint Committee on Administrative Rules, created by Section 7.02(a) of the Act.

“Director” means the Executive Director of the Committee.

“Register” means the Illinois Register which is published weekly by the Secretary of State. It contains notices and the text of all proposed and adopted rules.

“Rules Division” means the unit in the office of the Secretary of State which files rules and publishes the Register.

Section 210.200 Committee Function

The committee will fulfill its function of *promoting adequate and proper rules by agencies and understanding on the part of the public respecting such rules* and its responsibility to review rules and rulemaking. It will seek to cooperate with agencies as much as possible. It will conduct its hearings to promote full and open discussion of rules and rulemaking. This policy is meant to implement the spirit as well as the letter of the Act.

Section 210.300 Consultation with Agencies

Some agencies may have some problems implementing or complying with the rulemaking procedures of the Act. The Committee and its staff will discuss these types of problems with agencies. Such consultation will be used to advise agencies about form, statutory authority, or other matters which are considered by the Committee in its review of rules and rulemaking.

Section 210.400 Cooperation with the Rules Division

The Rules Division has the functions under the Act of filing rules and of publishing the Register. The Committee will cooperate fully with the Rules Division. The Committee will strive to establish

a good working relationship with the Rules Division to insure a smooth and efficient rulemaking process. The Committee's procedures will be coordinated with the Rules Division's "Rules on Rules" (see 1 Ill. Adm. Code 160).

Section 210.500 Use of Subpoenas

- a) The Committee is granted subpoena power by Section 7.03(b) of the Act. This power will be used only when an agency refuses:
 - 1) To appear before a Committee hearing.
 - 2) To provide information which is essential to the Committee's functions.
 - 3) To produce records or documents known to exist which are essential to the Committee's functions.
- b) Prior to the use of its subpoena power, the Committee will:
 - 1) Notify the agency head of the refusal and the fact that a subpoena may be used.
 - 2) Allow the agency to present its reasons for the refusal.
- c) The Director will issue a subpoena only when approved by all of the officers of the Committee or by a vote of the Committee.

TITLE 1: GENERAL PROVISIONS
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 220
REVIEW OF PROPOSED RULEMAKING

Section	
220.100	Definitions
220.200	Preliminary Review
220.300	Request for Economic Analysis
220.400	Format of Economic Analysis
220.500	Second Notice: Required Information
220.600	Second Notice: Additional Information
220.700	Staff Review
220.800	Committee Hearing
220.900	Criteria for Review
220.950	Filing Prohibition Criteria
220.1000	Objection; Filing Prohibition; Notice of No Objection
220.1100	Certification of Objection; Statement of Specific Objections
220.1200	Response to Objection: Deadline, Format
220.1300	Response to Objection: Manner
220.1350	Certification of Filing Prohibition; Statement of Specific Objections
220.1400	Review of Response to Objection
220.1500	Failure to Respond
220.1600	Limit of Substantive Changes
220.1700	Recommend Legislation

AUTHORITY: Authorized by Section 7.09 and implementing Sections 5.01 and 7.06 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1005.01, 1007.06, 1007.09).

SOURCE: 3 Ill. Reg. no. 8, page 18, effective April 1, 1979; amended at 3 Ill. Reg. no. 49, page 230, effective December 10, 1979; amended and codified at 4 Ill. Reg. no. 49, page 166, effective December 1, 1980; added and amended at 5 Ill. Reg. page 5164, effective May 15, 1981.

Section 220.100 Definitions

As used in this part:

"First notice" means the notice of proposed rulemaking which must be given to the public by agencies pursuant to Section 5.01(a) of the Act. This notice is published in the Register.

"First notice period" means the period of time for public comment which begins on the day the first notice appears in the Register. This period must be at least 45 days in length.

"Second notice" means the notice of proposed rulemaking which must be given by agencies to the Committee pursuant to Section 5.01(b) of the Act. This notice must contain the information required by Section 220.500 of this part and should also contain the information requested by Section 220.600 of this part.

"Second notice period" means that period of time established by the Act for Committee review of proposed rulemaking. This period must follow the end of the first notice period. It commences on the day the second notice is received by the Committee and will not be more than 45 days in length.

Section 220.200 Preliminary Review

In the first five days after the first notice, the agency may request in writing that the Committee conduct an informal review of the agency's proposed rulemaking. When such a review is made, the Committee staff will review the proposed rulemaking, including the notice and the text. The Committee staff may raise questions or problems as a result of its review, and will discuss these questions or problems with the agency. This review will be based on the criteria in Section 220.900 and Section 220.950. Such review will be in addition to the normal review which is discussed in Sections 220.500 and 220.700.

(Source Note: Amended at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 220.300 Request for Economic Analysis

In the first 30 days after the first notice, the Committee may request from the agency *an analysis of the economic and budgetary effects of the proposed rulemaking*. This request will be made in writing by the Director. The request will be made in each case unless it is clear that the effects in the areas outlined in the next section will not be substantial. The Committee will consider the information in the first notice and other available information in deciding whether or not to make this request.

Section 220.400 Format of Economic Analysis

If the Committee requests an analysis of the economic effects of the proposed rulemaking, the agency shall submit the analysis in writing to the Committee as part of the second notice. The analysis shall be in the form shown in Illustration A. It must include a discussion of at least these factors and an estimate of the effects of each factor in dollars:

- a) *Any direct economic effect on the persons who will be regulated by the rule.*
- b) *Any effect on the agency's budget.*
- c) *Any effect on the budgets of other State agencies.*
- d) *Any effect on State revenue.*

Section 220.500 Second Notice: Required Information

- a) *The second notice period will start on the day the second notice is received by the Committee. It will end 45 days later unless prior to that time the agency receives either:*
 - 1) *A statement of objection from the Committee. The agency may not adopt the rulemaking in this case until after it responds to the objection.*
 - 2) *A notice from the Committee stating that no objection will be issued.*
- b) The second notice must contain at least the following information:
 - 1) The name of the agency.
 - 2) The title of the proposed rulemaking.
 - 3) The date of the first notice.
 - 4) *The text and location of any changes made in the rule during the first notice period.*

- 5) If requested by the Committee as provided in Section 220.300, *an analysis of the economic and budgetary effects of the proposed rulemaking.*
 - 6) A response to any recommendations made by the State Library for changes in the rules to make them comply with the codification scheme.
 - 7) The name of the person who will respond to Committee questions regarding the proposed rulemaking for the agency.
- c) The second notice should be clearly identified as such, and shall be submitted to the Director at the following address:
- Joint Committee on Administrative Rules
520 South Second Street, Suite 100
Springfield, Illinois 62706
- d) In two working days after the receipt by the Committee of a second notice, the Committee will notify the Rules Division and the agency of the date on which the second notice period started. Notices which do not contain all of the information required by this section and by Section 5.01(b) of the Act will not be accepted by the Committee. An agency which submits such a notice will be informed in writing of the specific reasons the notice was not accepted.

Section 220.600 Second Notice: Additional Information

The agency should include the following information in the second notice at the time it is sent to the Committee. These items are in addition to the items which must be included in the second notice under Section 220.500.

- a) *An evaluation of all of the comments on the proposed rulemaking received by the agency from interested persons during the first notice period. This evaluation should not include any questions raised by the Committee in a preliminary review (see Section 220.200). This evaluation should include:*
- 1) A list of all of the persons and groups which made comments or which requested the opportunity to make comments.
 - 2) A list of all of the specific criticisms and suggestions which were raised in the comments.
 - 3) The agency's evaluation of each of the specific criticisms and suggestions.
 - 4) A statement that the agency has considered all of the comments which were received during the first notice period.
- b) *An analysis of the expected effects of the proposed rulemaking, which should include at least these items:*
- 1) Impact on the public affected groups.
 - 2) Changes in the agency's programs or structure which will result from the rule.

- c) *A justification and rationale for the proposed rulemaking*, which should include at least these items:
- 1) Changes in statutory language which require the rulemaking.
 - 2) Changes in agency policy, procedures, or structure which require the rulemaking.
 - 3) Other rules and proposed rules of the agency, which relate to the rulemaking.
 - 4) Federal laws, rules, or funding requirements, which may affect the rulemaking.
 - 5) Court orders or rulings which relate to the rulemaking.

Section 220.700 Staff Review

The Committee staff will review each second notice which is received as provided in Section 220.500. The items outlined in Section 220.600 will be included in the review. This staff review will be based on the criteria in Section 220.900 and Section 220.950. The staff may raise questions or problems as a result of its review and will discuss these questions or problems with the agency. The staff will report the results of its review to the Committee, and may develop a recommendation for action by the Committee. The staff may recommend that the Committee issue an objection, prohibit filing of the rulemaking, develop legislation, take some other action, or take no action. Such staff recommendations shall be advisory only and shall not limit the Committee's power to take some other action. In order to encourage full and open discussion of proposed rulemaking, the staff will try to insure that the agency is aware of the substance of such recommendations prior to the hearing.

(Source Note: Amended at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 220.800 Committee Hearing

The Committee will hold full and open hearings at least once each month on proposed rulemaking. The agenda for each hearing will be published as soon as possible prior to the hearing in the Register. Oral testimony will be taken at the hearing from the agency. Written comments will be considered from persons or groups which are affected by the rules as they relate to the criteria in Section 220.900 or Section 220.950. Such written comments should be sent to the Director at the following address:

Joint Committee on Administrative Rules
520 South Second Street, Suite 100
Springfield, Illinois 62706

Comments should be received at least three working days prior to the hearing. The Committee will provide a copy of such comments to the agency, unless the person or group requests that a copy of the comments not be provided to the agency.

(Source Note: Amended at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 220.900 Criteria for Review

The Committee will consider these criteria in its review of each proposed rulemaking:

a) Substantive

- 1) Is there legal authority for each part of the rulemaking?
- 2) Does each part of the rulemaking comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?
- 3) Does each part of the rulemaking comply with state and federal constitutions, state and federal law, and case law?
- 4) Does it include adequate standards for the exercise of each discretionary power which is discussed in the rulemaking?

b) Propriety

- 1) Is there an adequate justification and rationale for the rulemaking and for any regulation of the public embodied in the rules?
- 2) Has the agency reasonably considered the economic and budgetary effects of the rulemaking as well as less costly alternatives?
- 3) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
- 4) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?

c) Procedural

- 1) Does it comply with Section 5.01 of the Act?
- 2) Does it comply with the requirements of the Rules Division (see 1 Ill. Adm. Code 160)?
- 3) Does it comply with any additional requirements which have been imposed on the agency by state or federal law?
- 4) Does it comply with the agency's own rules for its rulemaking process?
- 5) Was the agency responsive to public comments which were made on the rulemaking?

Section 220.950 Filing Prohibition Criteria

If the Committee finds that the proposed rulemaking does not meet one or more of the criteria in Section 220.900, the Committee will then consider the following criteria:

- a) Is the rulemaking a *serious threat to the public interest*? In considering this question, the Committee will examine:
 - 1) Whether the rulemaking contains significant policies which have been rejected by the General Assembly in a proposed bill.
 - 2) Whether the rulemaking unconstitutionally or unlawfully discriminates against any citizens of the state.
 - 3) Whether the rulemaking unconstitutionally or unlawfully inhibits the free exercise of the rights of citizens of the state.

- b) Is the rulemaking *a serious threat to the public safety*? In considering this question, the Committee will examine:
 - 1) Whether the rulemaking could result in a significant decrease in the protection provided against threats to the safety of the citizens of the state.
 - 2) Whether the rulemaking could result in a significant increase in the threat of physical harm to the citizens of the state.
- c) Is the rulemaking *a serious threat to public welfare*? In considering this questions, the Committee will examine:
 - 1) Whether the rulemaking imposes significant unreasonable or unnecessary economic costs on citizens of the state.
 - 2) Whether the rulemaking would adversely affect the health or well-being of the citizens of the state.
 - 3) Whether the rulemaking would significantly and adversely affect the quality of life of the citizens of the state.

(Source Note: Added at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 220.1000 Objection; Filing Prohibition; Notice of No Objection

- a) If the Committee finds that the proposed rulemaking does not meet one or more of the criteria in Section 220.900, *the Committee will object to the proposed rulemaking.*
- b) If the Committee finds that the proposed rulemaking does not meet one or more of the criteria in Section 220.900 and also finds that the rulemaking meets one or more of the criteria in Section 220.950, the Committee will prohibit the filing of the proposed rulemaking. The prohibition will be limited to the portion of the proposed rulemaking which does not meet the criteria. *This action may be taken only by the affirmative vote of ten members of the Committee.*
- c) If the committee does not make such finding, *the Committee may notify the agency in writing that no objection will be issued.* Such a notice will be mailed to the agency in the first two working days after the day of the Committee hearing on the proposed rulemaking. Such notification will be made unless either:
 - 1) The second notice period has expired.
 - 2) The Committee finds, at the time of the hearing, that additional information is necessary in order to fully review the rulemaking.
- d) Upon receiving such notice that no objection will be issued, the agency may proceed to adopt the proposed rulemaking.
- e) A notice of no objection which is issued by the Committee should not be taken as implying approval in any way of the content of the rulemaking.

(Source Note: Amended at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 220.1100 Certification of Objection; Statement of Specific Objections

- a) If the Committee objects to a proposed rulemaking, *it shall certify the fact of the objection to the agency.* Such certification will be made in the first five working days after the day of the hearing. The form which is used for this purpose is shown in Illustration B. *The certification shall include a statement of the specific objections of the Committee to the proposed rulemaking.*
- b) Each statement of specific objections shall also be submitted to the Rules Division to be published in the Register.

Section 220.1200 Response to Objection: Deadline, Format

The agency should respond to an objection which is issued by the Committee within 90 days after it receives the statement of specific objections. The agency response should address each of the specific objections which are stated by the Committee. The response should be concise, but complete, and should clearly state the nature of the response and the rationale for the response. The response should be made on the form shown in Illustration C.

Section 220.1300 Response to Objection: Manner

The agency must respond to an objection by the Committee in one of the following ways:

- a) *Modify the proposed rulemaking to meet all of the specific objections stated by the Committee. The complete text of the rules including all of the changes should be included in the response.*
- b) *Withdraw the proposed rulemaking.* The agency should state the specific objections of the Committee or other reasons which are the basis of the withdrawal.
- c) *Refuse to modify or withdraw the proposed rulemaking.* The agency should present in its response its reasons for refusing to modify or withdraw the proposed rulemaking.

Section 220.1350 Certification of Filing Prohibition; Statement of Specific Objections

- a) If the Committee prohibits the filing of a proposed rulemaking, *it shall certify the prohibition to the agency and the Secretary of State.* Such certification will be made in the first five working days after the day of the hearing. The form used for this purpose is shown in Illustration D. The certification shall indicate the specific affected portion of the rulemaking and shall include a statement of the specific objections of the Committee to the proposed rulemaking.
- b) A notice of filing prohibition which includes the statement of specific objections shall be submitted to the Rules Division to be published in the Illinois Register.
- c) The proposed rulemaking may not be filed with the Rules Division for at least 180 days after the certification is received by the Secretary of State. The agency is prohibited from enforcing or invoking the rulemaking.

- d) The Committee shall introduce a joint resolution in either house of the General Assembly to continue the prohibition. The action will be taken as soon as practicable after the certification of prohibition.
- e) Passage of the joint resolution by the General Assembly within the 180 day period shall have the effect of permanently prohibiting the agency from filing the proposed rulemaking.

(Source Note: Added at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 220.1400 Review of Response to Objection

The Committee will review each of the responses to its objections which are made by agencies. If an agency modifies a proposed rulemaking to meet the specific objections of the Committee, the Committee will examine each of the specific changes made to meet the objections. *If the Committee finds that the changes do not remedy the objections, it will so notify the agency. It will also submit a copy of such a notice to the Rules Division to be published in the Register.* The notice will include a statement of the reasons the Committee found that the changes do not remedy the objections.

Section 220.1500 Failure to Respond

If the Committee does not receive a response to an objection from the agency within 90 days after the receipt of the objection by the agency, the rulemaking will be withdrawn by operation of law. Following the end of the 90 days, the Director *will send a notice of the fact of the withdrawal to the Rules Division.* The notice will state that (1) the agency has failed to respond within the 90 days, and (2) the rulemaking has been withdrawn by operation of law. The date on which the rulemaking will be withdrawn is the day after the last day of the 90 day period. The agency may not adopt a rulemaking which has been withdrawn.

Section 220.1600 Limit of Substantive Changes

After the start of the second notice period, no substantive change may be made to a proposed rule unless it is made in response to an objection or suggestion of the Committee. The Committee will review the text of adopted rules to insure that substantive changes have not been made in violation of this provision of the Act.

Section 220.1700 Recommend Legislation

The Committee may draft legislation as a result of its review of proposed rulemaking. The purpose of such legislation will be to provide authority, for the rulemaking, to resolve conflicts between the rules and statutes, to clarify the intent of acts which require the rulemaking, or to deal with other issues which are discovered in its review. Such legislation will be approved by a majority vote. It will then be introduced in either house of the General Assembly.

TITLE 1: GENERAL PROVISIONS
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 230
REVIEW OF EMERGENCY RULEMAKING

Section	
230.100	Basic Policy
230.200	Definition
230.300	Staff Review
230.400	Primary Criteria for Review
230.500	Secondary Criteria for Review
230.550	Suspension Criteria
230.600	Objection; Suspension
230.700	Certification of Objection; Statement of Specific Objections
230.800	Response to Objection: Deadline, Format
230.900	Response to Objection: Manner
230.1000	Failure to Respond
230.1100	Certification of Suspension; Statement of Specific Objections

AUTHORITY: Authorized by Section 7.09 and implementing Sections 5.02 and 7.07 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1005.02, 1007.07, 1007.09).

SOURCE: 3 Ill. Reg. no. 49, page 230, effective December 10, 1979; amended and codified at 4 Ill. Reg. no. 49, page 166, effective December 1, 1980; added and amended at 5 Ill. Reg. page 5164, effective May 15, 1981.

Section 230.100 Basic Policy

- a) The fact that situations occur in which agencies must take prompt action to adopt rules is recognized by the Committee and the Act. In some of these instances, emergency rules must be adopted under the process provided for this purpose by Section 5.02 of the Act. However, the Committee believes that public notice and comment is an essential part of the rulemaking process, which should only be by-passed for very serious reasons. The use of the emergency process must be limited. The process should only be used in a situation which *reasonably constitutes a threat to the public interest, safety or welfare, and requires the adoption of rules upon fewer days' notice than is required by Section 5.01 of the Act.*
- b) The Committee is empowered by Section 7.07 of the Act to *examine any rule.* The Committee will review each rule adopted through the use of emergency rulemaking under this power. The purpose of this review is to insure that the use of the process is limited to only those situations which meet the requirements of Section 5.02 of the Act. The criteria which are used in this review are stated in Sections 230.400, and 230.500 and 230.550 of this part.

(Source Note: Added at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 230.200 Definition

As used in this part, "*emergency rulemaking*" means both the process of adopting a rule as provided in Section 5.02 of the Act and the rule which is adopted by that process.

Section 230.300 Staff Review

The Committee staff will review each emergency rulemaking, including both the notice and the text of the rulemaking. This review will be based on the criteria in Sections 230.400, and 230.500 and 230.550 of this part. The Committee staff may raise questions or problems as a result of its review and will discuss these questions or problems with the agency. The staff will report the results of its review to the Committee and may develop a recommendation for action by the Committee. Such staff recommendations shall be advisory only and shall not limit the Committee's power to take some other action. In order to encourage full and open discussion of emergency rulemaking, the staff will try to insure that the agency is aware of the substance of such recommendations prior to the hearing.

(Source Note: Added at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 230.400 Primary Criteria for Review

The Committee will first consider these criteria in its review of emergency rulemaking:

- a) Does the agency's statement of the need for the emergency rulemaking show that it complies with Section 5.02 of the Act? The statement must show that *a situation exists which reasonably constitutes a threat to the public interest, safety or welfare and which requires the adoption of the rule upon fewer days' notice than is required by Section 5.01 of the Act.*
- b) Has the agency given an adequate reason for not complying with the notice and hearing requirements of the Act?
- c) Is the rulemaking limited to what is required by the emergency? It should contain no provisions which are not required to meet the emergency.
- d) Did the agency take *actions to make the emergency rulemaking known to the persons who may be affected by it?*
- e) Has the agency adopted the same rules, or rules which have *substantially the same purpose and effect*, through the use of the emergency process in the past 24 months?

Section 230.500 Secondary Criteria for Review

If the rulemaking is found to meet the criteria in Section 230.400, the Committee will then consider these criteria in its review of each emergency rulemaking:

- a) Substantive
 - 1) Is there legal authority for each part of the rulemaking?
 - 2) Does each part of the rulemaking comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?
 - 3) Does each part of the rulemaking comply with state and federal constitutions, state and federal law, and case law?
 - 4) Does it include adequate standards for the exercise of each discretionary power which is discussed in the rulemaking?

b) Propriety

- 1) Is there an adequate justification and rationale for the rulemaking and for any regulation of the public embodied in the rules?
- 2) Has the agency reasonably considered the economic and budgetary effects of the rulemaking as well as less costly alternatives?
- 3) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
- 4) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?

c) Procedural

- 1) Does it comply with the requirements of the Rules Division (see 1 Ill. Adm. Code 160)?
- 2) Does it comply with any additional requirements which have been imposed on the agency by state or federal law?
- 3) Does it comply with the agency's own rules for its rulemaking process?

Section 230.550 Suspension Criteria

If the Committee finds that the emergency rulemaking does not meet one or more of the criteria in Sections 230.400 and 230.500, the Committee will then consider the following criteria:

- a) Is the rulemaking a *serious threat to the public interest*? In considering this question, the Committee will examine:
 - 1) Whether the rulemaking contains significant policies which have been rejected by the General Assembly in a proposed bill.
 - 2) Whether the rulemaking unconstitutionally or unlawfully discriminates against any citizens of the state.
 - 3) Whether the rulemaking unconstitutionally or unlawfully inhibits the free exercise of the rights of citizens of the state.
- b) Is the rulemaking a *serious threat to the public safety*? In considering this question, the Committee will examine:
 - 1) Whether the rulemaking could result in a significant decrease in the protection provided against threats to the safety of the citizens of the state.
 - 2) Whether the rulemaking could result in a significant increase in the threat of physical harm to the citizens of the state.
- c) Is the rulemaking a *serious threat to the public welfare*? In considering this questions, the Committee will examine:
 - 1) Whether the rulemaking imposes significant unreasonable or unnecessary economic costs on citizens of the state.

- 2) Whether the rulemaking would adversely affect the health or well-being of the citizens of the state.
- 3) Whether the rulemaking would significantly and adversely affect the quality of life of the citizens of the state.

(Source Note: Added at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 230.600 Objection; Suspension

- a) If the Committee finds that the emergency rulemaking does not meet one or more of the criteria in Sections 230.400 and 230.500, *it will object to the rules*. The fact that the Committee does not object to a rulemaking should not be taken as implying approval in any way of the content of the rulemaking.
- b) If the Committee finds that the emergency rulemaking does not meet one or more of the criteria in Sections 230.400 and 230.500 and also finds that the rulemaking meets one or more of the criteria in Section 230.600, the Committee will suspend the emergency rules. The suspension will be limited to the portion of the emergency rules which does not meet the criteria. *This action may be taken only by the affirmative vote of ten members of the Committee.*

(Source Note: Amended at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 230.700 Certification of Objection; Statement of Specific Objections

- a) If the Committee objects to an emergency rulemaking, *it shall certify the fact of the objection to the agency*. Such certification will be made in the first five working days after the day of the hearing. The form which is used for this purpose is shown in Illustration E. *The certification shall include a statement of the specific objections of the Committee to the rules.*
- b) Each statement of specific objections shall also be submitted to the Rules Division to be published in the Register.

Section 230.800 Response to Objection: Deadline, Format

The agency should respond to an objection which is issued by the Committee within 90 days after it receives the statement of specific objections. The agency response should address each of the specific objections which are stated by the Committee. The response should be concise, but complete, and should clearly state the nature of the response and the rationale for the response. The response should be made in the manner shown in Illustration G.

Section 230.900 Response to Objection: Manner

The agency must respond to an objection by the Committee in one of the following ways:

- a) *Modify the emergency rulemaking to meet all of the specific objections stated by the Committee.* The complete text of the rules including all of the changes should be included in the

response. These changes may be made by submitting a notice with the changes to the Rules Division to be published in the Register. Modifying emergency rules by publishing such a notice will not be deemed to be a new rulemaking. It will not extend the 150 day effective period of the rules, nor will it be deemed to violate the provision of the Act which prohibits adoption of the same emergency rules twice.

- b) *Repeal the emergency rulemaking.* This may be done by submitting a notice to the Rules Division as provided in Section 160.1350 of the Rules on Rules (1 Ill. Adm. Code 160.1350). The agency should state the specific objections of the Committee or other reasons which are the basis of the repeal.
- c) *Refuse to modify or repeal the emergency rulemaking.* The agency should present in its response its reasons for refusing to modify or repeal the emergency rulemaking.

Section 230.1000 Failure to Respond

Failure of an agency to respond to an objection to an emergency rule within 90 days of the receipt of the objection shall be deemed to be a refusal to modify or repeal the rule.

Section 230.1100 Certification of Suspension; Statement of Specific Objections

- a) *If the Committee suspends an emergency rulemaking, it shall certify the suspension to the agency and the Secretary of State.* Such certification will be made in the first five working days after the day of the hearing. The form used for this purpose is shown in Illustration F. The certification shall indicate the specific affected portion of the rulemaking and shall include a statement of the specific objections of the Committee to the emergency rules.
- b) A notice of suspension which includes the statement of specific objections shall be submitted to the Rules Division to be published in the Illinois Register.
- c) The effectiveness of the emergency rules will be immediately suspended on receipt of the certification by the Secretary of State. Such suspension will be indicated on the face of the rules by the Rules Division. The suspension shall last at least 180 days after the certification is received by the Secretary of State. The agency is prohibited from enforcing or invoking the suspended rules.
- d) The Committee shall introduce a joint resolution in either house of the General Assembly to continue the suspension. This action will be taken as soon as practicable after the certification of suspension.
- e) Passage of the joint resolution by the General Assembly within the 180 day period shall have the effect of repealing the emergency rules. The Rules Division will immediately remove such rules from the collection of effective rules on passage of such a joint resolution.

(Source Note: Added at 5 Ill. Reg. page 5164, effective May 15, 1981.)

TITLE 1: GENERAL PROVISIONS
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 240
REVIEW OF PEREMPTORY RULEMAKING

Section	
240.100	Basic Policy
240.200	Definitions
240.300	Submission; Staff Review
240.400	Staff Report
240.500	Primary Criteria for Review
240.600	Secondary Criteria for Review
240.650	Suspension Criteria
240.700	Objection; Suspension
240.800	Certification of Objection; Statement of Specific Objections
240.900	Response to Objection: Format
240.1000	Response to Objection: Manner
240.1100	Rulemaking in Response to Objection
240.1200	Failure to Respond
240.1300	Certification of Suspension; Statement of Specific Objections
ILLUSTRATION A	Agency Analysis of Economic and Budgetary Effects of Proposed Rulemaking
ILLUSTRATION B	Certification of Objections to Proposed Rulemaking
ILLUSTRATION C	Agency Response to Joint Committee Objection to Proposed Rulemaking
ILLUSTRATION D	Certification of Filing Prohibition of Proposed Rulemaking
ILLUSTRATION E	Certification of Objection to Emergency or Peremptory Rules
ILLUSTRATION F	Certification of Suspension of Emergency or Peremptory Rules
ILLUSTRATION G	Agency Response to Joint Committee Objection to Emergency or Peremptory Rules

AUTHORITY: Authorized by Section 7.09 and implementing Sections 5.02, 7.04 and 7.07 of the Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1005.02, 1007.04, 1007.07, 1007.09).

SOURCE: 3 Ill. Reg. no. 49, page 230, effective December 10, 1979; amended and codified at 4 Ill. Reg. no. 49, page 166, effective December 1, 1980; added and amended at 5 Ill. Reg. page 5164, effective May 15, 1981.

Section 240.100 Basic Policy

- a) The fact that situations occur in which agencies are required by a federal law, federal rules and regulations, or a court order to take prompt action to adopt rules is recognized by the Committee and the Act. In some of these instances, peremptory rules must be adopted under the process provided for this purpose by Section 5.03 of the Act. However, the Committee believes that public notice and comment is an essential part of the rulemaking process, which should only be by-passed for very serious reasons. The use of the peremptory process must be limited. The process should only be used in a situation which precludes the agency's compliance with the general rulemaking requirements of the Act.
- b) The Committee is empowered by Section 7.07 of the Act to *examine any rule*. The Committee will review each rule adopted through the use of peremptory rulemaking under this power.

The purpose of this review is to insure that use of the process is limited to only those situations which meet the requirements of Section 5.03 of the Act. The criteria which are used in this review are stated in Sections 240.500, and 240.600 and 240.650 of this part.

(Source Note: Amended at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 240.200 Definitions

As used in this part:

"Conditions which preclude compliance with the general rulemaking requirements imposed by Section 5.01 of the Act" includes only those conditions which make it impossible to comply with the notice or hearing requirements of the Act. A federal law, federal rule or regulation, or court order which merely makes it more difficult to comply or which prescribes the content of such rulemaking does not make it impossible to comply.

"Federal rules and regulations" means those rules which are or will be published in the Code of Federal Regulations.

"Peremptory rulemaking" means both the process of adopting a rule as provided in Section 5.03 of the Act and the rule which is adopted by that process.

Section 240.300 Submission; Staff Review

On the same day that a notice of peremptory rulemaking is filed with the Rules Division, the agency shall submit to the Committee a copy of the court order or specific citation of the federal law or federal rules or regulations which require the rulemaking. The staff will review the peremptory rulemaking, including the notice and the text. This staff review will be based on the criteria in Sections 240.500, and 240.600 and 240.650. The staff may raise questions or problems as a result of its review of the rulemaking, and will discuss these questions or problems with the agency.

(Source Note: Amended at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 240.400 Staff Report

The staff will report the results of its review to the Committee and may develop a recommendation for action by the Committee. Such staff recommendations shall be advisory only and shall not limit the Committee's power to take some other action. In order to encourage full and open discussion, the staff will try to insure that the agency is aware of the substance of the recommendations.

Section 240.500 Primary Criteria for Review

The Committee will first consider these criteria in its review of peremptory rulemaking:

- a) Was the agency *precluded from complying with the general rulemaking requirements imposed by Section 5.01 of the Act*, as that phrase is defined in Section 240.300 of this part?
- b) Was the agency *required to adopt rules as a direct result of federal law, federal rules and regulations, or court order*?

- c) Is the rulemaking limited to what is required by the federal law, federal rules and regulations, or court order? It should contain no provisions which are not required.
- d) Has the agency given an adequate reason for not complying with the notice and hearing requirements of the Act?
- e) Did the agency file the notice within 30 days after the change in the rules was required as required by the Act?

Section 240.600 Secondary Criteria for Review

If the rulemaking is found to meet the criteria in Section 240.500, the Committee will then consider these criteria in its review of each peremptory rulemaking:

- a) Substantive
 - 1) Is there legal authority for each part of the rulemaking?
 - 2) Does each part of the rulemaking comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?
 - 3) Does each part of the rulemaking comply with state and federal constitutions, state and federal law, and case law?
 - 4) Does it include adequate standards for the exercise of each discretionary power which is discussed in the rulemaking?
- b) Propriety
 - 1) Is there an adequate justification and rationale for the rulemaking and for any regulation of the public embodied in the rules?
 - 2) Has the agency reasonably considered the economic and budgetary effects of the rulemaking as well as less costly alternatives?
 - 3) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
 - 4) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?
- c) Procedural
 - 1) Does it comply with the requirements of the Rules Division (see 1 Ill. Adm. Code 160)?
 - 2) Does it comply with any additional requirements which have been imposed on the agency by state or federal law?
 - 3) Does it comply with the agency's own rules for its rulemaking process?

Section 240.650 Suspension Criteria

If the Committee finds that the peremptory rulemaking does not meet one or more of the criteria in Sections 240.500 and 240.600, the Committee will then consider the following criteria:

- a) Is the rulemaking *a serious threat to the public interest*? In considering this question, the Committee will examine:
- 1) Whether the rulemaking contains significant policies which have been rejected by the General Assembly in a proposed bill.
 - 2) Whether the rulemaking unconstitutionally or unlawfully discriminates against any citizens of the state.
 - 3) Whether the rulemaking unconstitutionally or unlawfully inhibits the free exercise of the rights of citizens of the state.
- b) Is the rulemaking *a serious threat to the public safety*? In considering this question, the Committee will examine:
- 1) Whether the rulemaking could result in a significant decrease in the protection provided against threats to the safety of the citizens of the state.
 - 2) Whether the rulemaking could result in a significant increase in the threat of physical harm to the citizens of the state.
- c) Is the rulemaking *a serious threat to the public welfare*? In considering this question, the Committee will examine:
- 1) Whether the rulemaking imposes significant unreasonable or unnecessary economic costs on citizens of the state.
 - 2) Whether the rulemaking would adversely affect the health or well-being of the citizens of the state.
 - 3) Whether the rulemaking would significantly and adversely affect the quality of life of the citizens of the state.

(Source Note: Added at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 240.700 Objection; Suspension

- a) If the Committee finds that the preemptory rulemaking does not meet one or more of the criteria in Sections 240.500 and 240.600, it will object to the preemptory rules. The fact that the Committee does not object to a rulemaking should not be taken as implying in any way approval of the content of the rulemaking.
- b) If the Committee finds that the preemptory rulemaking does not meet one or more of the criteria in Sections 240.500 and 240.600 and also finds that the rulemaking meets one or more of the criteria in Section 240.650, the Committee will suspend the preemptory rules. The suspension will be limited to the portion of the preemptory rules which does not meet the criteria. *This action may be taken only by the affirmative vote of ten members of the Committee.*

(Source Note: Amended at 5 Ill. Reg. page 5164, effective May 15, 1981.)

Section 240.800 Certification of Objection; Statement of Specific Objections

- a) If the Committee objects to a peremptory rulemaking, it *shall certify the fact of the objection to the agency*. Such certification will be made in the first five working days after the day of the hearing. The form which is used for this purpose is shown in Illustration E. *The certification shall include a statement of the specific objections of the Committee to the rules.*
- b) Each statement of specific objections shall also be submitted to the Rules Division to be published in the Register.

Section 240.900 Response to Objection: Format

The agency should respond to an objection which is issued by the Committee within 90 days after it receives the statement of specific objections. The agency response shall address each of the specific objections which are stated by the Committee. The response should be concise, but complete, and should clearly state the nature of the response and the rationale for the response. The response should be made in the manner shown in Illustration G.

Section 240.1000 Response to Objection: Manner

The agency must respond to an objection by the Committee in one of the following ways:

- a) *Amend the peremptory rules to meet all of the specific objections stated by the Joint Committee.*
- b) *Repeal the peremptory rules.* The agency should state the specific objection of the Committee or other reasons which are the basis of the repeal.
- c) *Refusal to amend or repeal the peremptory rules.* The agency should present in its response its reasons for refusing to amend or repeal the rules.

Section 240.1100 Rulemaking in Response to Objection

If an agency elects to amend or repeal a rule in response to an objection, it should begin rulemaking for that purpose by giving notice as required by Section 5.01 of the Act. The Committee will give priority to rulemaking which was begun to meet an objection in setting its agenda. *The agency should complete rulemaking within 180 days after giving notice in the Register.*

Section 240.1200 Failure to Respond

Failure of an agency to respond to an objection by the Committee to a peremptory rule within 90 days of the receipt of the objection shall be deemed to be a refusal to amend or repeal the rule.

Section 240.1300 Certification of Suspension; Statement of Specific Objections

- a) If the Committee suspends a peremptory rulemaking, it *shall certify the suspension to the agency and the Secretary of State*. Such certification will be made in the first five working days after the day of the hearing. The form used for this purpose is shown in Illustration F. The certification shall indicate the specific affected portion of the rulemaking and shall include a statement of the specific objections of the Committee to the peremptory rules.

- b) A notice of suspension which includes the statement of specific objections shall be submitted to the Rules Division to be published in the Illinois Register.
- c) The effectiveness of the peremptory rules will be immediately suspended on receipt of the certification by the Secretary of State. Such suspension will be indicated on the face of the rules by the Rules Division. The suspension shall last at least 180 days after the certification is received by the Secretary of State. The agency is prohibited from enforcing or invoking the suspended rules.
- d) The Committee shall introduce a joint resolution in either house of the General Assembly to continue the suspension. This action will be taken as soon as practicable after the certification of suspension.
- e) Passage of the joint resolution by the General Assembly within the 180 day period shall have the effect of repealing the peremptory rules. The Rules Division will immediately remove such rules from the collection of effective rules on passage of such a joint resolution.

(Source Note: Amended at 5 Ill. Reg. page 5164, effective May 15, 1981)

Section 240. ILLUSTRATION A Agency Analysis of Economic and Budgetary Effects of Proposed Rulemaking

Agency: _____

Proposed Rulemaking: _____

1. Direct economic effect on the persons who will be regulated by the rule.

Discussion

Specific Estimated Effect
\$

2. Effect on the agency's budget.

Discussion

Specific Estimated Effect
\$

3. Effect on the budgets of other state agencies.

Discussion

Specific Estimated Effect
\$

4. Effect on State revenue.

Discussion

Specific Estimated Effect
\$

5. Other considerations relevant to the economic and budgetary effects of the proposed rulemaking.

Discussion

Signature of Agency Official

(See Sections 220.300, 220.400 and 220.500)

Section 240. ILLUSTRATION B Certification of Objection to Proposed Rulemaking

County of Sangamon)
)
State of Illinois)

The Joint Committee on Administrative Rules hereby certifies that pursuant to Section 7.04 and 7.06 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting on _____(Date), objected to _____(Title of Rulemaking), proposed by _____(Name of Agency).

A statement of the Joint Committee's specific objections accompanies this certification.

Please take notice that failure to respond within 90 days of receipt of this Statement of Objection shall constitute withdrawal of the proposed rulemaking published in the _____(Date) Illinois Register in its entirety.

(Signature)

(By: _____)

(Signature)

(Typewritten Name)

(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and sworn to before me this _____(Date) day of _____(Month), 19____(Year).

Notary Public

(See Section 220.1100)

Section 240.ILLUSTRATION C Agency Response to Joint Committee Objection to Proposed Rulemaking

Date: _____

Agency: _____

Title and Subject of Rule: _____

Response (Check One): _____ Modification of Rulemaking to Meet Objections

_____ Withdrawal of Rulemaking

_____ Refusal to Modify or Withdraw

Signature of Agency Official**Agency Response to Specific Joint Committee Objections:**

(Respond to each objection raised by the Joint Committee, indicating clearly the intended action of the agency in response to each objection and the rationale for such response. Use Additional pages as necessary.)

(See Section 220.1200)

Section 240. ILLUSTRATION D Certification of Filing Prohibition of Proposed Rulemaking

County of Sangamon)

State of Illinois)

The Joint Committee on Administrative Rules, hereby certifies that, pursuant to Section 7.06a of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting _____ (Date), prohibited the filing of _____ (Title of Rulemaking or Portion Thereof), proposed by _____ (Name of Agency).

A statement of the Joint Committee's specific objections accompanies this certification.

Please take notice that the agency is prohibited from filing the rulemaking with the Secretary of State and from enforcing or invoking for any reason the rulemaking for at least 180 days from the date this certification and statement are received by the Secretary of State.

Certified _____ (Date).

(Signature)

(By: _____)

(Signature)

(Typewritten Name)

(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and Sworn to before me this _____ (Date) day of _____ (Month), 19____ (Year).

Notary Public

(See Section 220.1350)

(Source Note: Added at 5 Ill. Reg. 5164, effective May 15, 1981.)

Section 240.ILLUSTRATION E Certification of Objection to Emergency or Peremptory Rules

County of Sangamon)

)

State of Illinois)

The Joint Committee on Administrative Rules hereby certifies that, pursuant to Section 7.04 and 7.07 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting on ____ (Date), objected to the ____ (Name of Agency)'s, ____ (Emergency, Peremptory) rules entitled or concerning ____ (Title or Subject of Rules) which were published in the ____ (Date), Illinois Register.

A statement of the Joint Committee's specific objections accompanies this certification.

Please take notice that failure of the Agency to respond to the Joint Committee's objections to a rule within 90 days of receipt of this Certification of Objection shall constitute refusal to amend or repeal the rule.

Certified ____ (Date).

(Signature)

(By:

(Signature)

(Typewritten Name)

(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and sworn to before me this ____ (Date) day of ____ (Month), 19 ____ (Year).

Notary Public

(See Sections 230.600 and 240.800)

Section 240.ILLUSTRATION F Certification of Suspension of Emergency or Peremptory Rules

County of Sangamon)
)
State of Illinois)

The Joint Committee on Administrative Rules hereby certifies that, pursuant to Section 7.07a of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting on _____(Date), suspended the _____(Name of Agency)'s, _____(Emergency, Peremptory) rules entitled or concerning _____(Title or Subject of Rules or Portion Thereof) which were published in the _____(Date) Illinois Register.

A statement of the Joint Committee's specific objections accompanies this certification.

Please take notice that the agency is prohibited from enforcing, or invoking for any reason, these rules which have been suspended and from filing with the Secretary of State any rule having substantially the same purpose and effect as these suspended rules for at least 180 days from the date this certification and statement are received by the Secretary of State.

Certified _____(Date).

(Signature)

(By: _____)

(Signature)

(Typewritten Name)

(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and Sworn to before me this _____(Date) day of _____(Month), 19____(Year).

Notary Public

(See Sections 230.1100 and 240.1300)

(Source Note: Added at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.ILLUSTRATION G Agency Response to Joint Committee Objection to Emergency or Peremptory Rules

Date: _____

Agency: _____

Title and Subject of Rule: _____

Response (Check One): _____ Initiate rulemaking to repeal the rules to meet the
Joint Committee's objection

_____ Initiate rulemaking to amend the rules to meet the
Joint Committee's objection

_____ Refusal to initiate rulemaking to remedy the Joint
Committee's objection

If rulemaking will be initiated, date notice of proposed rulemaking was, or is expected to be, published in the Illinois Register: _____

Agency Response to Specific Joint Committee Objections:

(Respond to each of the specific objections raised by the Joint Committee, indicating clearly the intended action of the agency in response to each objection and the rationale for such response. Use Additional pages as necessary.)

Signature of Agency Official

(See Sections 230.800 and 240.1000)

TITLE 1: GENERAL PROVISIONS
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 250
FIVE-YEAR EVALUATION OF ALL EXISTING RULES

Section	
250.100	Authority
250.200	Relation to Other Reviews
250.300	Subject Categories
250.400	Schedule: First Year
250.500	Schedule: Second Year
250.600	Schedule: Third Year
250.700	Schedule: Fourth Year
250.800	Schedule: Fifth Year
250.900	Notice to Agencies
250.1000	Initial Questions
250.1100	Staff Review
250.1200	Public Hearings
250.1300	Grouping of Rules
250.1400	Criteria for Review
250.1500	Staff Report; Agency Response
250.1600	Hearing on Staff Report
250.1700	Actions as Results of Review
250.1800	Actions: Objections
250.1900	Agency Response to Objection
250.2000	Failure to Respond
250.2100	Actions: Recommend Agency Action
250.2200	Recommend Legislation

AUTHORITY: Authorized by Section 7.09 and implementing Section 7.08 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1007.08, 1007.09).

SOURCE: 3 Ill. Reg. no. 34, page 204, effective September 1, 1979; amended and codified at 4 Ill. Reg. no. 49, page 166, effective December 1, 1980.

Section 250.100 Authority

The Committee will review all agency rules on a periodic basis by the subject of the rules. Each set of rules of each agency will be evaluated during the course of this review *at least once every five years*. This review is mandated by Section 7.08 of the Act.

Section 250.200 Relation to Other Reviews

The five-year review of all agency rules discussed in this part is in addition to the review of proposed rules of state agencies and other reviews of agency rules authorized by other provisions of the Act.

Section 250.300 Subject Categories

To insure that the Committee reviews *similar rules at the same time*, it will classify each set of rules in one of the subjects listed in Section 250.400 through 250.800. As new sets of rules are adopted,

they will be classified into these subjects and the Committee will maintain a current listing of all of the rules under each subject.

Section 250.400 Schedule: First Year

In the first year of each five-year review cycle the Committee will review all of the rules classified in these subjects:

- a) Industry and Labor
 - 1) Agricultural Regulation
 - 2) Business Regulation
 - 3) Consumer Protection
 - 4) Labor Laws
 - 5) Regulation of Occupations

Section 250.500 Schedule: Second Year

In the second year of each five-year review cycle, the Committee will review all of the rules classified in these subjects:

- a) Education and Cultural Resources
 - 1) Special Education
 - 2) Vocational and Professional Education
- b) Financial Institutions
- c) Government Management
 - 1) State Buildings Construction and Maintenance
 - 2) State Travel
- d) Human Resources
 - 1) Grants for Medical Services
 - 2) Public Health
 - 3) State Adult Institutions
- e) Natural Resources
 - 1) Land Pollution Control
 - 2) Wildlife Management
- f) Public Utilities

Section 250.600 Schedule: Third Year

In the third year of each five-year review cycle, the Committee will review all of the rules classified in these subjects:

- a) Education and Cultural Resources
 - 1) Educational Grants and Scholarship Programs

- 2) Cultural Resources
- b) Emergency Services
- c) Government Management
 - 1) Elections
 - 2) Records and Information Management
 - 3) State Financial Management
- d) Human Resources
 - 1) Food Handling and Services
 - 2) Regulation of Social Services
- e) Natural Resources
 - 1) Parks and Recreation Management
 - 2) Public Water Supplies
- f) Transportation
 - 1) Railroad Regulation

Section 250.700 Schedule: Fourth Year

In the fourth year of each five-year review cycle, the Committee will review all of the rules classified in these subjects:

- a) Education and Cultural Resources
 - 1) Higher Education
 - 2) Elementary and Secondary Education
- b) Government Management
 - 1) Government Purchasing
 - 2) Personnel and Merit Systems
 - 3) Retirement Systems
- c) Human Resources
 - 1) Grants for Social Services
 - 2) Regulation of Health Facilities
- d) Natural Resources
 - 1) Air Pollution Control
 - 2) Energy
- e) Transportation
 - 1) Airplane and Airport Regulation
 - 2) Traffic Safety

Section 250.800 Schedule: Fifth Year

In the fifth year of each five-year review cycle, the Committee will review all of the rules classified in these subjects:

- a) Education and Cultural Resources
 - 1) Educational Facilities and Safety
- b) Government Management
 - 1) Organizational and Rulemaking Rules
 - 2) State Revenue
- c) Human Resources
 - 1) Regulation of Health Professions
 - 2) Regulation of Medical Services
 - 3) State Juvenile Institutions
- d) Law Enforcement
- e) Natural Resources
 - 1) Water Resources and Pollution Control
- f) Transportation
 - 1) Highway Planning, Construction and Maintenance
 - 2) Trucking Industry Regulation

Section 250.900 Notice to Agencies

At the beginning of each year of the review, the Committee will notify each agency whose rules will be reviewed during that year. Such notification will include the following information:

- a) The specific sets of rules which are classified in the subject which will be reviewed.
- b) The location of such rules in the collection of the agency's rules which are on file with the Rules Division.
- c) The time period during which the Committee will be reviewing such rules.

Section 250.1000 Initial Questions

The Committee will request the agency to submit the following information on each set of rules being reviewed. The agency will be allowed at least 60 days to submit this information.

- a) A citation to the specific statute which authorizes each set of rules and the specific statute which each set of rules is implementing or interpreting.
- b) A list of the programs and organizational units of the agency which are related to each set of rules.
- c) An estimate of the cost to the State for operation of the agency programs related to each set of rules and for enforcement or monitoring of compliance with the rules.
- d) An estimate of the extent of compliance and non-compliance by the affected public with each set of rules, and the number and extent of variances permitted by the agency to each set of rules.
- e) An estimate of the effect of each set of rules on state revenue.

- f) An estimate of the economic effect on the persons and groups which are regulated by each set of rules.
- g) A discussion of the public need for the regulation provided by each set of rules. This discussion should include evidence of any harm that would result to the public health, welfare or safety, if the rules were repealed.

Section 250.1100 Staff Review

The staff of the Committee will review each set of rules. Such staff review will be based on the criteria in Section 250.1400. The staff may raise questions or problems as a result of its review and will discuss these questions or problems with the agency. The agency will be allowed at least 60 days to provide written responses to any questions raised.

Section 250.1200 Public Hearings

The Committee will hold one or more public hearings during the review of the rules in each subject to gather information and views from interested persons and groups, when it finds that such a hearing is necessary for a complete review of the rules. The Chairman of the Committee may designate a subcommittee for the purpose of holding such public hearings. The agenda of such hearings shall be published in the Register as provided in Section 7.02(c) of the Act. Each agency whose rules are the subject of a public hearing will be notified of the hearing. Testimony which is presented at such hearings will be considered by the Committee in its review of the rules as it relates to the criteria in Section 250.1400.

Section 250.1300 Grouping of Rules

The Committee may further group rules together by agency, or by subject to facilitate the conduct of the review or to report the findings to the Committee.

Section 250.1400 Criteria for Review

The Committee will consider these criteria in its review of each set of rules:

- a) Substantive
 - 1) Is there legal authority for each part of the rules?
 - 2) Does each part of the rules comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?
 - 3) Does each part of the rules comply with state and federal constitutions, state and federal law, and case law?
 - 4) Do they include adequate standards for the exercise of each discretionary power which is discussed in the rules?
- b) Propriety
 - 1) Is there an adequate justification and rationale for the rules and for any regulation of the public embodied in the rules?

- 2) Has the agency reasonably considered the economic and budgetary effects of the rules as well as less costly alternatives?
 - 3) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
 - 4) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?
- c) Procedural
- 1) Were the rules adopted in compliance with the Act?
 - 2) Were the rules adopted in compliance with the requirements of the Rules Division (see 1 Ill. Adm. Code 160)?
 - 3) Were the rules adopted in compliance with any additional requirements which have been imposed on the agency by state or federal law?
 - 4) Were the rules adopted in compliance with the agency's own rules for its rulemaking process?
 - 5) Has the agency been responsive to public comments which have been made on the rules and to related requests for rulemaking?
- d) Additional
- 1) Has the agency shown that the rules are necessary? Has the agency shown that there is a public need for the regulation embodied in the rules?
 - 2) Are the rules accurate and current in relation to agency operations and programs?
 - 3) Are the rules free of overlaps and conflicts between requirements and between regulatory jurisdictions?

Section 250.1500 Staff Report; Agency Response

The staff will report the results of its review to the Committee. The staff report may include recommendations for any of the types of action listed in Section 250.1700. Such recommendations shall be only advisory to the Committee and shall not limit the Committee's power to take some other action. Each agency whose rules are being reviewed shall be given an opportunity to submit its views and comments on the staff report in writing prior to the hearing by the Committee.

Section 250.1600 Hearing on Staff Report

The Joint Committee shall hold a hearing on each staff report in its review of rules in a subject. Such a hearing may be conducted as part of other hearings of the Committee. The agenda of such a hearing will be published in the Register as provided in Section 7.02(c) of the Act. At the hearing the Committee will consider the rules and the staff report in relation to the criteria in Section 250.1400. Written or oral testimony by the agencies and testimony received at public hearings held as provided Section 250.1200 will also be considered.

Section 250.1700 Actions as Results of Review

In response to problems which are discovered in the rules as a result of its review, the Committee may take any of these types of actions:

- a) Object to specific rules which were reviewed. Such objections to rules shall be made as discussed in Section 250.1800.
- b) Recommend rulemaking or some other type of action by agencies. This type of action may include recommending changes in the rulemaking process which is followed by agencies or coordination of rulemaking between agencies. Such action shall be taken as discussed in Section 250.2100.
- c) Recommend further study of the problems by a legislative committee, commission or other unit.
- d) Draft specific legislation to correct the problem. Such legislation will be approved by a majority vote. It will then be introduced in either house of the General Assembly.

Section 250.1800 Actions: Objections

If the Committee finds that a rule or a set of rules does not meet one or more of the criteria in Section 250.1400, it will object to the rule as provided in Section 7.07 of the Act. In five working days after the day of the hearing the Committee will certify the fact of the objection to the agency. The form used for this purpose is shown in Illustration H. A statement of specific objections to the rule shall be included.

Section 250.1900 Agency Response to Objection

- a) The agency should respond to an objection which is issued by the Committee within 90 days after it receives the statement of specific objections. The agency response should address each of the specific objections which are stated by the Committee. The agency response should be concise, but complete, and should clearly state the nature of the response and the rationale for the response. The response should be made on the form shown in Illustration I.
- b) The agency must respond to an objection by the Committee in one of the following ways:
 - 1) Amend the rule to meet all of the specific objections stated by the Committee. The agency should take action to begin the rulemaking which is necessary to respond in this way.
 - 2) Repeal the rule. The agency should state the specific objections of the Committee or other reasons which are the basis of the repeal. The agency should take action to begin the rulemaking which is necessary to respond in this way.
 - 3) Refuse to amend or repeal the rule. The agency should present in its response its reasons for refusing to amend or repeal the rule.

Section 250.2000 Failure to Respond

- a) Failure of an agency to respond to an objection to a rule within 90 days of the receipt of the objection shall be deemed to be a refusal to amend or repeal the rule.
- b) Failure of an agency to complete rulemaking which was started in response to an objection within 180 days of the notice of the rulemaking shall be deemed to be a refusal to amend or repeal the rule.

Section 250.2100 Actions: Recommend Agency Action

If the Committee finds that a set of rules raises problems which require new rulemaking or some other type of action by an agency the Committee will recommend such action to the agency. In five working days after the day of the hearing, the Committee will certify the fact of such recommendation to the agency. The form used for this purpose is shown in Illustration J. A statement of the specific recommended actions, the reasons for the recommendation and the date by which the agency should respond shall be included. The Committee will monitor whether agencies take the actions which it recommends as a result of its review. Agencies should inform the Committee of actions which are being taken in response to such recommendations.

Section 250.2200 Recommend Legislation

If an agency refuses to remedy an objection to a rule or set of rules, or fails to take recommended action, the Committee may draft legislation to address the problems. Such legislation will be approved by a majority vote. It will then be introduced in either house of the General Assembly.

TITLE 1: GENERAL PROVISIONS
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES
PART 260
COMPLAINT-REVIEWS OF EXISTING RULES

Section	
260.100	Authority and Purpose
260.200	Definition of Complaint
260.300	Items to be Included in Complaints
260.400	Staff Review
260.500	Complaints About Policies Not in Rules
260.600	Staff Report
260.700	Criteria for Review
260.800	Hearing by the Committee
260.900	Objection
260.1000	Agency Response to Objection
260.1100	Failure to Respond
260.1200	Recommend Legislation
260.1300	Notice to Persons Making Complaint
ILLUSTRATION H	Certification of Objection to Existing Rules
ILLUSTRATION I	Agency Response to Joint Committee Objection to Existing Rules
ILLUSTRATION J	Certification of Recommendation

AUTHORITY: Authorized by Section 7.07 and implementing Sections 7.07 and 7.04 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1977, ch. 127, par. 1007.04, 1007.07, 1007.09).

SOURCE: 3 Ill. Reg. no. 34, page 219, effective August 24, 1979; amended and codified at 4 Ill. Reg. no. 49, page 166, effective December 1, 1980.

Section 260.100 Authority and Purpose

The Committee will review rules of state agencies based on complaints received from interested persons or groups as provided in this part. This type of review of rules is authorized by Sections 7.04 and 7.07 of the Act. Review of rules by the Committee as provided in this part is in the nature of a legislative investigation and is not a prerequisite in any way for judicial review of rules.

Section 260.200 Definition of Complaint

For the purposes of this part, a complaint will consist of any written communication received by the Committee which raises questions which are related to the criteria in Section 260.700. Complaints may address one or more of the following:

- a) An existing rule of an agency.
- b) The failure of an agency to fully or properly enforce its rules.
- c) The absence of rules which are required by statute or are necessary for the proper conduct of an agency program or function.
- d) An agency policy which is applied generally, but is not embodied in the rules of the agency.

Section 260.300 Items to be Included in Complaints

- a) Complaints should be sent to the Director at this address:

Joint Committee on Administrative Rules

520 South Second Street, Suite 100

Springfield, Illinois 62706

- b) Each complaint should include these items:

- 1) A discussion of the issues involved.
- 2) The names and addresses of the persons or groups making the complaint.
- 3) The agency whose rules, policies, or practices are being questioned.
- 4) The specific rule or set of rules involved.
- 5) A description of the effect of the rules, policies or practices on the persons or groups making the complaint.
- 6) A discussion of any additional facts necessary to understand the issues. .
- 7) A discussion of how the issues relate to the criteria in Section 260.700.

Section 260.400 Staff Review

The staff of the Committee will review each complaint. The staff may raise questions or problems as a result of its review and will discuss these questions or problems with the agency. Such staff review will be based on the criteria in Section 260.700. The staff will try to insure that the agency is aware of the substance of the complaint and the results of the staff review.

Section 260.500 Complaints About Policies Not in Rules

When a complaint is received which alleges that an agency has a policy which is not embodied in rules, the Committee will encourage the persons making the complaint to petition the agency as provided in Section 8 of the Act.

Section 260.600 Staff Report

The staff shall report the results of its review to the Committee. The staff report will present evidence of possible problems with the rules in relation to the criteria in Section 260.700. The report may include recommendations for action by the Committee. Such recommendations shall be only advisory to the Committee and shall not limit the Committee's power to take some other action.

Section 260.700 Criteria for Review

The Committee will consider these criteria in its review of rules based on a complaint:

- a) Substantive
- 1) Is there legal authority for each part of the rules?
 - 2) Does each part of the rules comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?

- 3) Does each part of the rules comply with state and federal constitutions, state and federal law, and case law?
- 4) Do they include adequate standards for the exercise of each discretionary power which is discussed in the rules?

b) Propriety

- 1) Is there an adequate justification and rationale for the rules and for any regulation of the public embodied in the rules?
- 2) Has the agency reasonably considered the economic and budgetary effects of the rules as well as less costly alternatives?
- 3) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
- 4) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?

c) Procedural

- 1) Were the rules adopted in compliance with the Act?
- 2) Were the rules adopted in compliance with the requirements of the Rules Division (see 1 Ill. Adm. Code 160)?
- 3) Were the rules adopted in compliance with any additional requirements which have been imposed on the agency by state or federal law?
- 4) Were the rules adopted in compliance with the agency's own rules for its rulemaking process?
- 5) Has the agency been responsive to public comments which have been made on the rules and to related requests for rulemaking?

d) Additional

- 1) Has the agency shown that the rules are necessary? Has the agency shown that there is a public need for the regulation embodied in the rules?
- 2) Are the rules accurate and current in relation to agency operations and programs?
- 3) Are the rules free of overlaps and conflicts between requirements and between regulatory jurisdictions?

Section 260.800 Hearing by the Committee

Any one of the officers of the Committee may place a complaint on the agenda of the Committee to consider the rules. Such action will be based on evidence of possible problems with the rules in relation to the criteria in Section 260.700. A complaint will not be placed on the agenda if the officers find that the same issues have been previously considered by the Committee, unless the complaint reveals substantial information which was not available to the Committee at that time. At the hearing

the persons making the complaint and the agency will be allowed to present their views. If the Committee finds that other persons or groups are directly affected by the rule, such persons or groups will also be allowed to present their views orally or in writing.

Section 260.900 Objection

If the Committee finds that a rule which is the subject of a complaint does not meet one or more of the criteria in Section 260.700, it will object to the rule as provided in Section 7.07 of the Act. In five working days after the day of the hearing the Committee will certify the fact of the objection to the agency. The form used for this purpose is shown in Illustration H. A statement of specific objections to the rule shall be included.

Section 260.1000 Agency Response to Objection

- a) The agency should respond to an objection which is issued by the Committee within 90 days after it receives the statement of specific objections. The agency response should address each of the specific objections which are stated by the Committee. The agency response should be concise, but complete, and should clearly state the nature of the response and the rationale for the response. The response should be made on the form shown in Illustration I.
- b) The agency must respond to an objection by the Committee in one of the following ways:
 - 1) Amend the rule to meet all of the specific objections stated by the Committee. The agency should take action to begin the rulemaking which is necessary to respond in this way.
 - 2) Repeal the rule. The agency should state the specific objections of the Committee or other reasons which are the basis of the repeal. The agency should take action to begin the rulemaking which is necessary to respond in this way.
 - 3) Refuse to amend or repeal the rule. The agency should present in its response its reasons for refusing to amend or repeal the rule.

Section 260.1100 Failure to Respond

- a) Failure of an agency to respond to an objection to a rule within 90 days of the receipt of the objection shall be deemed to be a refusal to amend or repeal the rule.
- b) Failure of an agency to complete rulemaking which was started in response to an objection within 180 days of the notice of the rulemaking shall be deemed to be a refusal to amend or repeal the rule.

Section 260.1200 Recommend Legislation

If an agency refuses to remedy an objection to a rule or set of rules, the Committee may draft legislation to address the problems. Such legislation will be approved by a majority vote. It will then be introduced in either house of the General Assembly.

Section 260.1300 Notice to Persons Making Complaint

The Director will try to insure that the persons or groups making the complaint are aware of the result of the Committee review and the nature of the agency response.

Section 260.ILLUSTRATION H Certification of Objection to Existing Rules

The Joint Committee on Administrative Rules hereby certifies that, pursuant to Sections 7.04 and 7.07 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules objected on ____ (Date) to the ____ (Name of Agency)'s rules entitled or concerning ____ (Title or Subject of Rules) which appear at ____ (Page or Location Identification) in the agency's rules.

A statement of the specific objections of the Joint Committee accompanies this certification.

Please take notice that failure to respond to this objection within 90 days, or failure to complete rulemaking initiated in response to this objection within 180 days of the receipt of this Certification of Objection shall constitute a refusal to remedy the objection.

Certified ____ (Date).

(Signature)

(By: _____)

(Signature)

(Typewritten Name)

(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and sworn to before me this ____ (Date) day of ____ (Month), 19 ____ (Year).

Notary Public

(See Sections 250.1800 and 260.900)

Section 260. ILLUSTRATION I Agency Response to Joint Committee Objection to Existing Rules

Date: _____

Agency: _____

Title and Subject of Rule: _____

- Response (Check One): _____ Initiate rulemaking to repeal the rule(s) to meet the Joint Committee's objection
- _____ Initiate rulemaking to amend the rule(s) to meet the Joint Committee's objection
- _____ Refusal to initiate rulemaking to remedy the Joint Committee's objection

If rulemaking will be initiated, date notice of proposed rulemaking was, or is expected to be, published in the Illinois Register: _____

Agency Response to Specific Joint Committee Objections:

(Respond to each of the specific objections raised by the Joint Committee, indicating clearly the intended action of the agency in response to each objection and the rationale for such response. Use Additional pages as necessary.)

Signature of Agency Official

(See Sections 250.1900 and 260.1000)

Section 260.ILLUSTRATION J Certification of Recommendation

The Joint Committee on Administrative Rules hereby certifies that, on ____ (Date), pursuant to Section 7.04(3), 7.04(1) and 7.08 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules as a result of its review of rules entitled or concerning ____ (Title or Subject of Rules) recommended rulemaking or other administrative action by ____ (Name of Agency).

A statement of the specific recommendation of the Joint Committee and reasons for the recommendation accompanies this certification.

Please take notice that failure to act to implement this recommendation within reasonable time shall be considered by the Joint Committee as a refusal to remedy the situation.

Certified ____ (Date)

(Signature)

(By: _____)

(Signature)

(Typewritten Name)

(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and sworn to before me this ____ (Date) of ____ (Month), 19 ____ (Year).

Notary Public

(See Section 250.2100)

APPENDIX C (1)

IN THE CIRCUIT COURT OF SANGAMON COUNTY, ILLINOIS

SEVENTH JUDICIAL CIRCUIT

MOBIL OIL CORPORATION)	
A Corporation,)	
)	
Plaintiff,)	
)	
v.)	No. 422-79
)	
J. Thomas Johnson,)	
Director of the Department of)	
Revenue of the State of Illinois,)	
and JERRY COSENTINO, State)	
Treasurer of the State of Illinois)	
)	
Defendants.)	

JUDGEMENT ORDER

This cause coming on to be heard for trial upon Plaintiff's Third Amended Complaint and Defendant's Answer thereto and upon the proofs, oral, written and documentary taken and filed and upon the arguments by counsel for the respective parties, the court, being fully advised in the premises, finds as follows:

1. The court has jurisdiction of the subject matter and of the parties;
2. Plaintiff Mobil Oil Corporation ("Mobil") is a corporation organized and existing under the laws of the State of New York and is authorized under the Illinois Business Corporation Act to transact business in Illinois.

3. Defendant J. Thomas Johnson is Director of the Department of Revenue of the State of Illinois ("Department").

4. Defendant Jerry Cosentino is the State Treasurer of the State of Illinois.

5. Mobil purchased crude oil from various producers and sellers of crude oil. Mobil's sole purpose in operating the refinery is to refine crude oil into saleable products such as gasoline and petroleum distillates.

6. During the refining process, crude oil undergoes certain chemical changes which results in the creation of two waste products and one by-product which are known as refinery fuels. The two waste products are catalytic coke and process gas. The by-product is heavy fuel oil.

7. In July, 1976, the Department of Revenue began an audit of Mobil's books and records to ascertain whether it had any unpaid liabilities under the Illinois Retailer's Occupation Tax Act and Illinois Use Tax Act.

8. More than a year after the routine audit began, in August of 1977, Department auditors notified Mobil that the Department also intended to impose use tax upon catalytic coke, process gas and heavy fuel oil consumed in the refining process. At that time, the Department had no policy, formula, rule or regulation which taxed refinery fuels. The Department admittedly had no expertise or experience in the refining industry. The Department consulted an outside expert to review its decision to impose the tax and to assist it in developing a formula for calculating the tax. The outside expert supplied the Department with a formula which did not, in the Department's opinion, produce enough tax so the Department proceeded to assess use tax on catalytic coke, process gas and heavy fuel oil as if Mobil were actually using crude oil.

9. Mobil does not use crude oil as a refinery fuel. The three materials known as refinery fuel are not crude oil. However, the Department's formula assumes that Mobil's cost for the refinery fuels is the same as the price paid for

crude oil. The court finds that the only generally accepted accounting principle applicable to the issue is the relative sales value approach. The court further finds that, under the relative sales value approach, Mobil had a \$0.00 cost for process gas and catalytic coke and a cost less than the price of crude oil for heavy fuel oil. It is, therefore, improper to impose tax on these three materials as if they had the same cost as crude oil.

10. If plaintiff's use of refinery fuel is taxable at all under the Use Tax Act, the only proper method of imposing the tax is the relative sales value method as testified to by Stanley J. Scott and as explained in Mobil Exhibit 46.

11. The policy of imposing the use tax on refinery fuels and the method which the Department chose to calculate the tax were statements of general applicability that implement, apply, interpret or prescribe law or policy and therefore were "rules" within the meaning of the Illinois Administrative Procedure Act. (Ill. Rev. Stat. 1979 ch. 127 §1003.09) The Administrative Procedure Act applied to the formation of the Department's policy of taxing refinery fuels and establishment of a formula by which to calculate the tax. The Department of Revenue failed to follow the Administrative Procedure Act in the formation of the policy of taxing refinery fuels and development of the formula of how to compute the tax; therefore, the assessment of use tax on refinery fuel is void.

12. As a result of applying its formula to the audit which began in July, 1976, the Department notified Mobil, in May, 1979, that it allegedly owed \$2,244,633.00 in use tax together with \$1,131,852.00 in interest for the period from January 1, 1973 through December 31, 1976. Mobil paid the total amount of the use tax and interest claimed, \$3,376,485.00, under protest on June 13, 1979. In a subsequent audit for the period from January 1, 1977, through December 31, 1979, the Department applied the same formula and claimed that Mobil owed \$3,484,206.00 in use tax together with \$923,315.00 in interest. Mobil paid this tax and interest, totalling \$4,407,521.00, under protest on October 30, 1980.

13. Mobil is entitled to a refund of the entire amount of tax and interest so paid under protest. Further, Mobil is entitled to an additional \$392,771.59 in

interest for the period from June 13, 1979 until November 17, 1980 based on the requirement, contained in III. Rev. Stat. 1979 ch. 120 §439.19, that credits or refunds bear interest at the rate of $\frac{1}{2}$ of 1% per month. Finally, Mobil is entitled to an additional amount of interest, from November 17, 1980 until the date the refund is paid, based on this court's order of December 9, 1980.

14. During the audit periods in question, Mobil executed eight waivers of the statute of limitations contained in III. Rev. Stat. 1979 ch. 120 §444 and §439.12. The waivers were not executed solely for the convenience of the Illinois Department of Revenue.

15. The Illinois Use Tax Act is constitutional.

IT IS, THEREFORE, ORDERED ADJUDGED AND DECREED AS FOLLOWS:

A. Defendants J. Thomas Johnson, Director of the Department of Revenue of the State of Illinois and Jerry Cosentino, State Treasurer of the State of Illinois, and their agents, employees and successors in office be and they hereby are permanently enjoined from collecting or assessing Illinois Use Tax on the use of refinery fuels based on the formula applied to Mobil in the instant case;

B. Defendant Jerry Cosentino be and he hereby is ordered and required to refund and return to plaintiff the sum of \$8,086,777.59 together with additional interest calculated according to paragraph 14 of this judgment order.

C. There is no just reason for delaying enforcement of this judgment order.

ENTER: /S/ Simon L. Friedman
Simon L. Friedman, Judge

DATED: July 16, 1981

APPENDIX C (2)

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT

SANGAMON COUNTY, ILLINOIS

ST. GEORGE'S UNIVERSITY SCHOOL)	
OF MEDICINE, AMERICAN UNIVERSITY)	
OF THE CARRIBEAN, UNIVERSITY OF)	
COMINICA,)	
	0	
Plaintiffs,)	
)	
v.)	No. 81-L-155
)	
DEPARTMENT OF REGISTRATION AND)	
EDUCATION, STATE OF ILLINOIS;)	
Gary Clayton, Director; MEDICAL)	
EXAMINING COMMITTEE, DR. DAVE)	
FOX, Temporary Chairman,)	
)	
Defendants.)	

ORDER

The matter of ST. GEORGE'S UNIVERSITY SCHOOL OF MEDICINE, et al. v. DEPARTMENT OF REGISTRATION AND EDUCATION, et al. having properly come before this Court on administrative review, and the Court having considered the entire record in this case, and having considered the pleadings, briefs and arguments of counsel for the parties and further being otherwise fully advised in the premises, hereby finds the following:

1. That Rule 1, which was in effect during the pendency of the hearings before the Defendant, DEPARTMENT OF REGISTRATION AND EDUCATION, is an unconstitutional delegation of administrative authority to an agency not within its control.

2. That during the pendency of the hearings before the DEPARTMENT OF REGISTRATION AND EDUCATION, the MEDICAL EXAMINING COMMITTEE did in fact change its use of the World Health Organization Listing of Medical Schools in regard to the accreditation of foreign medical schools, in violation of the due process rights of the Plaintiffs.

3. That the findings of fact made by the Defendant in not approving the Plaintiff schools are against the manifest weight of evidence and are reversed.

4. That the Court finds from the record as supplemented by Plaintiff's exhibits that Plaintiff schools are reputable and in good standing.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED and DECREED:

That the decision of the Department of Registration and Education is reversed and the cause is remanded to the Department of Registration and Education for entry of the decision concerning the status of plaintiff schools consistent with the above findings of this Court.

Enter:

/S/ Richard J. Cadagin

RICHARD J. CADAGIN

Circuit Judge

Date: July 24, 1981

APPENDIX C (3)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW-MISCELLANEOUS DIVISION

CHICAGO DIVISION OF HORSEMEN'S)		
BENEVOLENT AND PROTECTIVE)		
ASSOCIATION AND EDWARD W. REYNOLDS,)		
)		
Plaintiffs,)		
v.)	No.	81 L 3268
)		
ILLINOIS RACING BOARD, RAY)		
GARRISON, FARRELL GRIFFIN,)		
CHARLES SCHMIDT, JOSEPH KELLMAN,)		
JOHN GARVEY, ROBERT WARD and)		
CECIL TROY,)		
)		
Defendants.)		

ORDER

The Court has considered the verified complaint and petition for a temporary restraining order; the existing medication rules of the defendant; and the arguments of counsel.

The Court hereby finds that the facts established by the verified complaint and petition show that the plaintiffs will suffer irreparable injury unless the temporary restraining order is entered in that many members of the plaintiff will be forced to cease racing entirely; or will suffer a serious reduction in income.

The Court finds that an emergency exists in that the rules are to go into effect Monday, February 16, 1981, and the plaintiff must be made aware of what rules will be in effect by Friday, February 13, 1981; and the witnesses required by the plaintiff are from other jurisdictions and will not be available until February 13.

The Court finds that if the allegations of the verified complaint and petition are true, that lasix and phenylbutazone provide recognized therapeutic treatment for horses and do not prevent the detection of prohibited drugs in tests performed by the defendant that there is a reasonable probability that the plaintiff will be successful on its complaint.

The Court finds that the defendant has been operating for many years under rules which have permitted the use of lasix and phenylbutazone, under certain limitations.

Therefore, the Court finds that no serious injury can occur to the defendant or the public if the defendant continues to enforce the existing rules insofar as they refer to phenylbutazone and lasix.

The Court finds that the plaintiff does not have an adequate remedy at law; and that the equities are balanced in favor of the court granting a temporary restraining order until February 20, 1981, at which time the court will hear the plaintiff's complaint for a preliminary injunction.

WHEREFORE, it is hereby ordered that the defendant and its agents and employees are restrained and enjoined from enforcing any medication rule against the thoroughbred trainers of horses three years old and older concerning lasix and phenylbutazone except the existing rules 303 (a)(3), 303 (a)(4), 318E and 318G until February 20, 1981.

It is further ordered that the plaintiffs are required to comply with all other provisions of Chapter C.9 adopted by the Illinois Racing Board.

Defendants are given leave to file their answer instanter. This cause is set for hearing on February 20, 1981, at 2:00.

_____, 1981

E N T E R:

Judge James C. Murray

February 11, 1981

J U D G E

APPENDIX C (4)
OPINION OF THE ILLINOIS ATTORNEY GENERAL

February 19, 1981

FILE NO. 81-003

REVENUE:

Validity of Procedures Set Forth in
Article 14 of the Department of
Revenue Administrative Rules and
Regulations

J. Thomas Johnson, Director
Department of Revenue
1500 South 9th Street
Springfield, Illinois 62707

Dear Mr. Johnson:

I have a letter from your predecessor wherein he inquired whether the procedures set forth in Article 14 of the Department of Revenue's Administrative Rules and Regulations pertaining to the Retailers' Occupation Tax Act (Ill. Rev. Stat. 1979, ch. 120, par. 440 et seq.) are valid. For the reasons hereinafter stated, it is my opinion that substantial portions of Article 14 are not valid, due to the lack of adequate statutory support for promulgation in the aforementioned Act.

According to your predecessor's letter, Article 14, which was filed on June 7, 1979, and became effective June 17, 1979, was adopted by the Department to implement procedures for enforcement of section 13½ of the Retailers' Occupation Tax Act (Ill. Rev. Stat. 1979, ch. 120, par. 452½), which provides that:

Any officer or employee of any corporation subject to the provisions of this Act who has the control, supervision or responsibility of filing returns and making payment of the amount of tax herein imposed in accordance with Section 3 of this Act and who wilfully fails to file such return or to make such payment to the Department shall be personally liable for such amounts, including interest and penalties thereon, in the event that after proper proceedings for the collection of such amounts, as provided in said Act, such corporation is unable to pay such amounts to the department; and the personal liability of such officer or employee as provided herein shall survive the dissolution of the corporation.

Article 14, herein reproduced in full, provides that:

"Any officer or employee of the corporation who has the control, supervision or responsibility of filing returns and making payment of the amount of tax imposed in accordance with Section 3 of the Act, and who wilfully fails to file such return or to make such payment to the Department, shall be personally liable for such amounts, including interest and penalties thereon, in the event that after proper proceedings for the collection of such amounts, as provided in the Act, such corporation is unable to pay such amounts to the Department. The personal liability for such officer or employee as provided herein, shall survive the dissolution of the corporation.

When the Department has obtained a judgment against a corporation, and a subsequent execution upon that judgment has been returned by a sheriff indicating no assets were found, when a Seizure Warrant issued to a sheriff has been returned indicating no assets were found, or when the Department has established that a corporation is unable to pay the amount due, the Department will issue to any officer or employee of the corporation who has the control, supervision or responsibility of filing returns and making payment of the amount of tax imposed in accordance with Section 3 of the Act, and who wilfully fails to file such return or to make such payment to the Department, a Notice of Tax

Liability in the amount of the tax, penalty and interest due the Department by the corporation. If such officer or employee or his legal representative shall, within 20 days after such Notice of Tax Liability, file a protest to said Notice of Tax Liability and request a hearing in conformity with the provisions of the Retailers' Occupation Tax Act. If a protest to the Notice of Tax Liability and request for a hearing thereon is not filed within 20 days after such notice, such Notice Tax Liability shall become final without the necessity of a final assessment being issued and shall be deemed to be a final assessment.

After the issuance of a final assessment, or a Notice of Tax Liability which becomes final without the necessity of actually issuing a final assessment as hereinbefore provided, the Department, at any time before such assessment is reduced to judgment, may grant a rehearing (or grant departmental review and hold an original hearing if no previous hearing in the matter has been held) upon the application of the person aggrieved. The Department, in determining whether a rehearing or departmental hearing, and/or the discovery of new evidence that was unavailable at the time of the original hearing. Pursuant to such hearing or rehearing, the Department shall issue a revised final assessment to such person or his legal representative for the amount found to be due as a result of such hearing or rehearing."

Section 12 of the Retailers' Occupation Tax Act specifically provides that the Department has the authority to:

* * * make, promulgate and enforce such reasonable rules and regulations relating to the administration and enforcement of the provisions of this Act as may be deemed expedient.

* * *

It is a well-established general maxim of administrative law that administrative

rules and regulations must be authorized by statute and that a statute may not be altered or added to by the exercise of a power to promulgate rules and regulations thereon. (Northern Ill. Auto Workers v. Dixon (1979), 75 Ill. 2d 53, 60.) Moreover, with reference to the Department of Revenue, Illinois courts have stated that rules and regulations promulgated by that Department may not extend the scope of the Retailers' Occupation Tax Act because the Department is without authority to broaden statutory provisions. (Saxon-Western Corp. v. Mahin (1979), 78 Ill. App. 3d 125, 129; Terrace Carpet Co. v. Dep't. of Revenue (1977), 46 Ill. App. 3d 84, 90.) Consequently, to be valid, article 14 must find an adequate statutory basis in the Act and must present a reasonable and consistent interpretation of the authorizing statute.

Briefly, the first paragraph of Article 14 and section 13½ of the Act are substantially identical. Thereafter, in paragraphs 2 and 3 of Article 14, the Department has detailed a procedure which purports to implement the final assessment of tax liability against the responsible officer or employee after the Department has established that a corporation is unable to pay.

More specifically, paragraph 1 of Article 14 provides, as does section 13½ of the Act, for the personal liability of certain officers and employees under specified conditions and only:

* * * in the event that after proper proceedings for the collection of such amounts, as provided in the Act, such corporation is unable to pay such amounts to the Department.* * * (Emphasis added.)

The words of the statute are clear in providing that an officer or employee may be held personally liable for the tax due from a corporation only when the corporation is unable to pay as indicated by failure to collect from the corporation in accordance with the proceedings for collection provided in the Act.

Consequently, the first paragraph of Article 14 is merely a restatement of that portion of section 13½ of the Act and, as such, is valid, although without legal effect apart from the statute itself.

In the second paragraph of Article 14, the Department purports to set up three alternative procedures to establish that a corporation is unable to pay an amount due. Specifically, that portion of Article 14 provides that:

* * *

When the Department has obtained a judgement against a corporation, and a subsequent execution upon that judgment has been returned by a sheriff indicating no assets were found, when a Seizure Warrant issued to a sheriff has been returned indicating no assets were found, or when the Department has established that a corporation is unable to pay the amount due, the Department will issue * * * a Notice of Tax Liability * *

* * *

The first two procedures are valid because, as required by section 13½ of the Act, they are "proper proceedings for the collection of such amounts, as provided in said Act". (Ill. Rev. Stat. 1979, ch. 120, pars. 444a, 444e, 444f.) However, the third procedure, "or when the Department has established that corporation is unable to pay the amount due", is not a proceeding authorized by the Act and therefore is not supported by adequate statutory authority.

The Act provides various proceedings for the collection of amounts due. Specifically, these proceedings include judicial proceedings by levy on execution after judgment (Ill. Rev. Stat. 1979, ch. 120, par. 444), foreclosure on a tax lien

(Ill. Rev. Stat. 1979, ch. 120, pars 444a, 444e), levy on the Department's warrant (Ill. Rev. Stat. 1979, ch. 120, par. 444f), together with, according to sections 5e and 5f (Ill. Rev. Stat. 1979, ch. 120, pars, 444e, 444f), other assessment. Although such a procedure is authorized against taxpayers elsewhere in the Act (Ill. Rev. Stat. 1979, ch. 120, par. 443), it does not appear to be authorized by section 13½ against the responsible officer or employee even when the corporation has been properly determined as unable to pay. Further, because the action authorized by section 13½ against the responsible officer or employee is in the nature of a suit to collect the amount of tax due from the corporation the assessment of which is final and not subject to collateral attack People ex rel. Scott v. Pintozi (1971), 50 Ill. 2d 115, 126-7), it does not appear that such a procedure is necessary. It should be noted that at the time of the action for collection against the responsible officer or employee, he must be shown to have willfully failed to file such return or make payment. Of course, as a matter of courtesy and to afford the individual an opportunity to pay, the Department could give notice of its claim to the responsible officer or employee and thereafter file the action authorized by section 13½ for the amount due. However, a Notice of Tax Liability and the procedure for "final assessment" as provided in Article 14 has no legal consequence as far as imposing liability under section 13½ of the Act.

Very truly yours,

ATTORNEY GENERAL

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28

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